International Standards on the Enforcement of Civil Judgments: Current Situation and Possible Solutions for Vietnam

Dissertation

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(Doctor iuris)

under the Supervision of

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Table of Contents

Index of Vietnamese Literature

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Báo Pháp luật Việt Nam, http://baophapluat.vn/	Vietnam Law Newspaper
Bình luận Luật thi hành án dân sự	Commentary on Civil Judgment Enforcement Law, Vietnamese Judicial Publishing House 2019
Cẩm nang Thi hành án dân sự	Handbook on Enforcement of Civil Judgments in Vietnam, Vietnamese Judicial Publishing House 2019
Cổng thông tin điện tử của Bộ Tư pháp, Việt Nam, https://moj.gov.vn/Pages/home.aspx	Electronic Portal of the Ministry of Justice, Vietnam, https://moj.gov.vn/en/Pages/home.aspx
Cổng thông tin điện tử của Tổng cục Thi hành án dân sự Việt Nam, http://thads.moj.gov.vn/Pages/home.aspx	Electronic Portal of the General Department of Civil Judgment Enforcement, Vietnam
Nhà Xuất bản Chính trị Quốc gia Sự thật Việt Nam, http://www.nxbctqg.org.vn/	Vietnamese National Political Publishing House
Nhà Xuất bản Tư pháp Việt Nam, http://nxbtp.moj.gov.vn	Vietnamese Judicial Publishing House
Tạp chí Dân chủ và Pháp luật của Bộ Tư pháp, Việt Nam, http://tcdcpl.moj.gov.vn/Pages/home.aspx	Democracy and Law Journal of the Ministry of Justice, Vietnam
Tạp chí Khoa học Pháp lý của Đại học Quốc gia Hà Nội, Việt Nam, https://vnu.edu.vn/home/?C1711/	Journal of Science, (Legal Studies), of the Vietnam National University, Hanoi (VNU), http://vnu.edu.vn/eng/

N89/TaP-CHi-KHOA-HoC.htm

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Tạp chí Nhân quyền của Văn phòng Thường trực Ban Chỉ đạo về Nhân quyền của Chính phủ Việt Nam	Human Rights Journal of the Standing Office of the Steering Committee on Human Rights of the Government of Vietnam

List of Abbreviations

§	Article/*Artikel*
AFTA	ASEAN Free Trade Area
ALI	American Law Institute
AO	The Fiscal Code of Germany *(Abgabenordnung)*
APEC	Asia Pacific Economic Cooperation
Approx.	Approximately
ArbGG	Labor Court Act *(Arbeitsgerichtsgesetz)*
Art.	Article
ASEAM	Asia-Europe Meeting
ASEAN	The Association of Southeast Asian Nations
Aufl.	Auflage
AVAG	The Anerkennungs- und Vollstreckungsausführungsgesetz
BC/BCS	Report-The Standing Committee
BC/CCTP	Report/Judicial Reform
BC-BTP	Report-The Ministry of Justice
BC-CP	Report-The Vietnamese Government
BC-NHNN	Report-The State Bank of Vietnam
BC-QH	Report-The Vietnamese National Assembly
BC-UBTP	Report-Judicial Committee
BGB	The German Civil Code *(Bürgerliches Gesetzbuch)*
BGBL	Federal Law Gazette *(Bundesgesetzblatt)*

Brussel I Regulation	1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters dated 27 September 1968
Brussels Ibis Regulation	Regulation (EU) No 1215/2012 of the European Parliament and the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters
BTA	The Vietnam-U.S. Bilateral Trade Agreement Summary
BTP-TCTHADS	The Ministry of Justice-The General Department of Civil Judgment Enforcement
BVerfG	The Federal Constitutional Court (*Bundesverfassungsgericht)*
BVerfGG	Act on the Federal Constitutional Court (*Bundesverfassungsgerichtsgesetz)*
CCJE	Consultative Council of European Judges
CEPEJ	The European Commission for the Efficiency of Justice
CEPEJ (2018)26	Calvez, Françoise/Regis, Nicolas: Length of Court Proceedings in the member States of the Council of Europe based on the Case Law of the European Court of Human Rights, as adopted at the CEPEJ 31th plenary meeting (Strasbourg), 3 and 4 December 2018 by the European Commission for the Efficiency of Justice, available at https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b
CEPEJ Studies	European Commission for the

No. 8	Efficiency of Justice, 2007, "Enforcement of Court Decisions in Europe", Report prepared by the Research Team on Enforcement of Court Decisions
Circular No. 200/2016/TT-BTC	Circular No. 200/2016/TT-BTC dated 9 November 2016 of the Ministry of Finance on the Setting up, Management, Use and Statement of Funding in order to Ensure the Operation of the Enforcement Agencies and Costs of forcible Enforcement
Circular No. 216/2016/TT-BTC	Circular No. 216/2016/TT-BTC dated 11 November 2016 of the Ministry of Finance Providing for Enforcement Fees, Collection, Management and Use of Enforcement Fees
CIS	The Commonwealth of Independent States
CIVEA	Civil Enforcement Association
CJE	Civil Judgment Enforcement
CoE	Council of Europe
COM (2002) 746 final, Brussels, 20.12.2002	Green Paper of the Commission of the European Communities on a European Order for Payment Procedure and on Measures to simplify and speed up Small Claims' Litigation
COM (2004) 173 final, Brussels, 25.05.2004	Proposal for a Regulation of the European Parliament and the Council creating a European Order for Payment Procedure
COM (2005) 87 final, Brussels, 15.03.2005	Proposal for a Regulation of the European Parliament and the Council establishing a European Small Claims Procedure
COM (2006) 57	Amended Proposal for a Regulation of

final, Brussels, 07.02.2006	the European Parliament and the Council creating a European Order for Payment Procedure
Conclusion No. 01-KL/TW	Conclusion No. 01-KL/TW dated 4 April 2016 of the Politburo on the Continuation of the Politburo Resolution No. 48-NQ/TW
Conclusion No. 92-KL/TW	Conclusion No. 92-KL/TW dated 12 March 2014 of the Politburo on Continuing Resolution No. 49-NQ/TW, dated 02 June 2005, of the Politburo term IX on the Judicial Reform Strategy to 2020
Council Regulation (EC) No. 44/2001	Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Regulation as amended by Regulation (EC) No. 1791/2006 dated 20 December 2006)
CPTPP/TPP	The Comprehensive and Progressive Agreement for Trans-Pacific Partnership/Trans-Pacific Partnership
CPV	The Communist Party of Vietnam
CTHADS-BC	The Department of Civil Judgment Enforcement-Report
Decision No. 101/QD-TTg	Decision No. 101/QD-TTg dated 14 January 2016 of the Prime Minister on issuing the Plan for Implementation of the Resolution No. 107/2015/QH13
Decision No. 2693/QD-BTP	Decision No. 2693/QD-BTP dated 30 December 2016 of the Ministry of Justice approved the Plan for Training and Fostering Officials and Public Employees of 2017
Decision No.	The Decision No. 273/QĐ-TCTHADS

273/QĐ-TCTHADS	dated 22 February 2017 of the General Department of CJE on the Issuance of the Judgment Execution Process within the CJE Agencies
Decision No. 285/QD-BTP	Decision No. 285/QD-BTP dated 12 December 2018 of the Minister of Justice Regulation on Functions, Tasks, Powers and Organizational Structure of the Inspectorate of the Ministry of Justice
Decision No. 51/2002/QD-BTP	Decision No. 51/2002/QD-BTP dated 27 February 2002 of the Minister of Justice on Ethical Standards of the Executors of the Civil Judgment Enforcement Agencies
Decision No. 59/2015/QD-TTg	The Decision No. 59/2015/QD-TTg dated 19 November 2015 of the Prime Minister on Promulgating Multidimensional Poverty Levels Applicable during 2016-2020
Decision No. 61/2014/QD-TTg	Decision No. 61/2014/QD-TTg dated 30 October 2014 of the Vietnamese Prime Minister Regulation on Functions, Tasks, Powers and Organizational Structure of the General Department of Civil Judgment Enforcement under the Ministry of Justice
Decision No. 734/QĐ-TCTHADS	Decision No. 734/QĐ-TCTHADS of the General Department of Civil Judgment Enforcement dated 30 September 2015 on issuing the Table of Period the Preservation of Dossiers, Documents of Civil Judgment Enforcement
Decree No. 110/2013/ND-	Decree No. 110/2013/ND-CP dated 24 September 2013 Regulation on

CP	Sanction of Administrative Violation in the Field of Judicial Assistance, Judicial Administration, Marriage and Family, Civil Judgment Enforcement, Enterprise and Cooperative Bankruptcy, amended by Decree No. 67/2015/ND-CP dated 14 August 2015
Decree No. 117/2018/ND-CP	Decree No. 117/2018/ND-CP dated 11 September 2018 of the Vietnamese Government on Protection of Confidentiality and Provision of Client Information of Credit Institutions and Foreign Banks' Branches
Decree No. 120/2016/ND-CP	Decree No. 120/2016/ND-CP dated 23 August 2016 of the Vietnamese Government on Detailing and Guiding the Implementation of a number of Articles of the Law on Fees and Charges
Decree No. 135/2013/ND-CP	Decree No. 135/2013/ND-CP dated 18 October 2013 of the Government on Amendments to Name and a number of Articles of Decree No. 61/2009/ND-CP
Decree No. 24/2010/ND-CP	Decree No. 24/2010/ND-CP dated 15 March 2010 Providing for the Recruitment, Employment and Management of Civil Servants
Decree No. 60/2000/ND-CP	Decree No. 60/2000/ND-CP dated 30 October 2000 of the Vietnamese Government on Stipulating the Execution of the Non-Custodial Reform Penalty
Decree No. 61/2000/ND-CP	Decree No. 61/2000/ND-CP dated 30 October 2000 of the Vietnamese Government on Stipulating the Execution of suspended Sentences
Decree No.	Decree No. 61/2009/ND-CP dated 24

61/2009/ND-CP	July 2009 of the Vietnamese Government on the Organization and Operation of Bailiffs under the Pilot Scheme in Ho Chi Minh City, which was amended by Decree No. 135/2013/ND-CP dated 18 October 2013 and took effect from 5 December 2013
Decree No. 62/2015/ND-CP	Decree No. 62/2015/ND-CP dated 18 July 2015 of the Vietnamese Government on Detailing and Guiding several Articles of the Law on Enforcement of Civil Judgments
Description No. 120/TTr-CP	Description No. 120/TTr-CP dated 08 May 2014 of the Vietnamese Government about the Act on Amending and Supplementing a number of Articles of the Law on Enforcement of Civil Judgments
Directive 2000/35/EC	Directive 2000/35/EC of the European Parliament and the Council of 29 June 2000 on Combating late Payment in Commercial Transactions
Directive 95/46/EC	Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the Protection of Individuals regarding the Processing of personal Data and on the free Movement of such Data
DS-PT	Civil-Appeal Court
DSST	Civil Judgment of First Instance Court/First Instance Judgment on Civil
DS-ST	Civil-First Instance Court
e.g.,	For example, for instance: abbreviation for *exempli gratia* in Latin
EBRD	The European Bank for Reconstruction

	and Development
ECHR	The European Convention on Human Rights
ECJ(s)	Enforcement of Civil Judgment(s)
ECtHR	The European Court of Human Rights
ed.	edition
EOP	Regulation (EC) No. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European Order for Payment Procedure
ESCP	Regulation (EC) No. 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure
et seq.	Latin for what is following, German abbreviation is ff
etc.	And so on, and the rest: abbreviation for etcetera
EU	The European Union
EULIS	The European Land Information Service
FamFG	Act on Proceedings in Family Matters and in Matters of Noncontentious Jurisdiction/*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*
fn.	Footnote
FTA	Free Trade Agreement
GCE	Global Code of Enforcement
GG	Basic Law for the Federal Republic of Germany or the German Basic Law/Constitution *(Grundgesetz für die Bundesrepublik Deutschland)*
Good Practice	CEPEJ, Good Practice Guide on

Guide on Enforcement of Judicial Decisions of 11 December 2015	Enforcement of Judicial Decisions of 11 December 2015 (Adopted at the 26th CEPEJ Plenary Session, 10-11 December 2015), (CEPEJ (2015)10)
Guidelines for a better implementation of enforcement of 17 December 2009	The Guidelines for a better Implementation of the existing Council of Europe's Recommendation on Enforcement, adopted by the CEPEJ at its 14th Plenary Meeting, Strasbourg, 9-10 December 2009, (CEPEJ (2009)11REV2)
GVG	The Courts Constitution Act (*Gerichtsverfassungsgesetz)*
GVGA	Business Instruction for Bailiffs *(Geschäftsanweisung für Gerichtsvollzieher)*
GvKostG	The Bailiffs' Costs Act *(Gerichtsvollzieherkostengesetz, GvKostG)*, Law on the Costs of Bailiffs 2001
hrs.	Hours
i.e.	"in other words," stands for *id est* from Latin, which means "that is"
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICJ	The Statute of the International Court of Justice
InsO.	Insolvency Statute *(Insolvenzordnung)*
IPA	Investment Protection Agreement
IT	Information Technology

JC(s)	The Judgment Creditor(s)
JD(s)	The JD(s)
Joint Circular No. 09/2014/TTLT-BTP-TANDTC-VKSNDTC-BTC	Joint Circular No. 09/2014/TTLT-BTP-TANDTC-VKSNDTC-BTC between the Ministry of Justice, the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Finance, issued 28 February 2014 on Guidelines for Pilot Implementation of Bailiff Institution prescribed in Resolution No. 36/2012/QH13 dated 23 November 2012 of the National Assembly
KL/TW	Conclusion/Central Committee
KSTHADS/QD	Supervision Civil Judgment Enforcement/Decision
KWG	Banking Act or Credit Services Act or the Act on Credit Institutions *(Gesetz über das Kreditwesen/ Kreditwesengesetz)*
Legis.	Legislation
LTP	The Legal Transition Programme
LVwVG Baden-Württemberg	Administration Enforcement Act *(Verwaltungsvollstreckungsgesetz für Baden-Württemberg)*
ND-CP	Degree-Government
No.	Number
NQ-HDTP	Resolution-Judicial Council
NQ-TW	Resolution-Central Committee
Ohada	The Council of Ministers of the Organization for the Harmonization of Business Law in Africa
Opinion No. 13 (2010) on the Role of Judges in	The Opinion No. 13 (2010) of the Consultative Council of European Judges on the Role of Judges in the

the Enforcement of Judicial Decisions, or (Opinion No. 13 (2010))	Enforcement of Judicial Decisions, 19th November 2010
Ordinance on the Privileges and Immunities 1993	The Ordinance on the Privileges and Immunities relating to Diplomatic Mission, Consular Posts and Representative Offices of International Organization in Vietnam 1993
Para.	Paragraph
QD-BTP	Decision-The Ministry of Justice
QD-CCTHA	Decision-Civil Judgment Enforcement Bureau District/Sub-department of Civil Judgment Enforcement
QD-CCTHADS	Decision-Sub-department of Civil Judgment Enforcement
QD-GQKN	Decision-Complaint Settlement Decision
QD-TTg	Decision-The Prime Minister
QH	The Vietnamese National Assembly
Recommendation Rec (2001) 10	Recommendation Rec (2001) 10 of the Committee of Ministers to member states on the European Code of Police Ethics (Adopted by the Committee of Ministers on 19 September 2001 at the 765th Meeting of the Ministers' Deputies)
Recommendation Rec (2003)14	Recommendation Rec (2003)14 of the Committee of Ministers to Member States on the Interoperability of Information Systems in the Justice Sector (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers'

	Deputies)
Recommendation Rec (2003)15	Recommendation Rec (2003)15 of the Committee of Ministers to member states on Archiving of Electric Documents in the Legal Sector (adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)
Recommendation Rec (2003)17 of 9 September 2003	Recommendation Rec (2003)17 of the Committee of Ministers to Member States on Enforcement (Adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies
Recommendation Rec (2006)2	Recommendation Rec (2006)2 of the Committee of Ministers' to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd Meeting of the Ministers' Deputies)
Regulation (EU) 2015/2421	Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015
Regulation (EU) No. 655/2014	Regulation No 655/2014 of 15 May 2014 was signed by the Presidents of the Council of EU and the European Parliament on 15 May 2015 (published in the OJ of 27 June 2014) "Establishing a European Account Preservation Order Procedure to facilitate Cross-Border Debt Recovery in Civil and Commercial Matters"
Regulation No. 805/2004	Regulation No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European

	Enforcement Order for uncontested Claims
Report No. 01/BC-BTP	Report No. 01/BC-BTP dated 02 January 2018 of the Ministry of Justice of Vietnam on the 2017 Judicial Summary and the 2018 Orientation, Tasks and Solutions
Report No. 112-BC/BCS	Report No. 112-BC/BCS dated 16 August 2013 of the Party Committee of the Ministry of Justice of Vietnam, on Summary Results of the Implementation of CJE Work Period 1993-2012 and Administrative Judgment Enforcement Work Period 1996-2012 under the Responsibility of the Ministry of Justice
Report No. 18/BC-NHNN	Report No. 18/BC-NHNN dated 01 March 2013 of the State Bank of Vietnam on the Implementation of Decision 2453/QD-TTg of the Prime Minister on approving the Project Promote Non-Cash Payment in Vietnam 2011-2015
Report No. 240/CTHADS-BC	Report No. 240/CTHADS-BC of the Department of Civil Judgment Enforcement Hanoi dated 3 August 2017 on the Results of Judgment Execution on Asset Recovery in Economic and Corruption Criminal Cases, during the period from 01 October 2016 to 31 July 2017 and the Task Orientation for the last 2 months of 2017
Report No. 289/BC-CP	Report No. 289/BC-CP dated 19 October 2012 of the Vietnamese Government on the Execution of the Judgment in 2012
Report No. 35-	Report No. 35-BC/CCTP dated 12

BC/CCTP	March 2014 of the Central Judicial Reform Steering Committee, summarizing Report 8 years of Implementation the Resolution No. 49-NQ/TW
Report No. 4291/BC-UBTP12	Report No. 4291/BC-UBTP12 dated 05 October 2010 of the Judicial Committee of National Assembly on Law-abiding in the Civil Judgment Enforcement
Report No. 538/BC-CP	The Report No. 538/BC-CP dated 19th October 2015 of the Vietnamese Government, summarizing Report on the Pilot Implementation of Bailiff Institution prescribed in Resolution No. 36/2012/QH13 dated 23 November 2012 of the National Assembly
Report No. 63/BC-BTP	Report No. 63/BC-BTP dated 13th March 2014 of the Ministry of Justice of Vietnam about the 4-year summarizing Implementation of the 2008 Law on Enforcement of Civil Judgments
Resolution No. 03/2015/NQ-HDTP	Resolution No. 03/2015/NQ-HDTP dated 28 October 2015 of the Council of Justices of the Supreme People's Court of Vietnam on Process for Selecting, Publishing and Adopting Precedents
Resolution No. 04/2019/NQ-HDTP	Resolution No. 04/2019/NQ-HDTP dated 18 June 2019 of the Council of Justices of the Supreme People's Court of Vietnam on Process for Selecting, Publishing and Adopting Precedents comes into force from 15 July 2019
Resolution No. 107/2015/QH13	Resolution No.107/2015/QH13 of 26 November 2015 of the Vietnamese National Assembly on an

	Implementation of Institutions on Bailiffs required Termination the Private Bailiff Pilot Operation Scheme and Widened the Scope of the Private Bailiffs on Nationwide
Resolution No. 24/2008/QH12	Resolution No. 24/2008/QH12 was adopted on 14 November 2008 by the Vietnamese National Assembly on the Implementation of the Law on Enforcement of Civil Judgments
Resolution No. 48-NQ/TW	Resolution No. 48-NQ/TW dated 24 May 2005 of the Politburo of the CPV on the Strategy for the Development and Improvement of Vietnam's Legal System to the year 2010 and Direction for the Period up to 2020
Resolution No. 49-NQ/TW	Resolution No. 49-NQ/TW was adopted on 2 June 2005 of the Politburo of the CPV on the Judicial Reform Strategy to 2020
Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002	The Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ), (Adopted by the Committee of Ministers on 18 September 2002 at the 808th meeting of the Minister's Deputies)
Rn.	Margin number *(Randnummer)*
S.	Sentence
SGG	Social Court Act *(Sozialgerichtsgesetz)*
Study No. JAI/A3/2002/02	Burkhard Hess, Study No. JAI/A3/2002/02 on Making more Efficient the Enforcement of judicial Decisions within the European Union: Transparency of a Debtor's Assets,

	Attachment of Bank Accounts, Provisional Enforcement and Protective Measures
Sub-para.	Subparagraph
The Civil Code 2015	The Civil Code 2015 of Vietnam
The Constitution of Vietnam	The Constitution of the Socialist Republic of Vietnam was adopted on 28 November 2013 and came into force from 1 April 2014
The Convention on Jurisdictional Immunities	The 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property
The CPC 2015	The 2015 Civil Procedure Code of Vietnam or the 2015 Code of Civil Procedure of Vietnam
The Hague Convention 1971	The Hague Convention 1971 the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (Concluded 01 February 1971)
The LECJ	The Law on Enforcement of Civil Judgments of Vietnam 2014
The SEE region	The Countries of South East Europe
The Uniform Act	The Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution of Ohada (adopted on 10 April 1998, JO Ohada No 6, 1 July 1998)
Trans.	Translation/translated
TT-BTC	Circular-The Ministry of Finance
TT-BTP	Circular-The Ministry of Justice
TTLT-BTP-TANDTC-	Joint Circular-The Ministry of Justice-The Supreme People's Court- The Supreme People's Procuracy-The

VKSNDTC-BTC	Ministry of Finance
UIHJ	The International Union of Judicial Officers (*Union Internationale des Huissiers de Justice)*
UN	The United Nations
UNCLOS	The Convention of the United Nations on the Law of the Sea 1982
UNIDROIT	The International Institute for the Unification of Private Law, which is an Independent Intergovernmental Organization with its Seat in Rome
VCLT	The Vienna Convention on the Law of Treaties
Vietnam	The Socialist Republic of Vietnam
VND	Vietnam Dong (Currency Unit of Vietnam)
Vol.	Volume
VwGO	Code of Administrative Court Procedure *(Verwaltungsgerichtsordnung)*
WTO	World Trade Organization
ZPO	The German Civil Procedure Code *(Zivilprozessordnung)*
ZVG	Act on Enforced Auction and Receivership *(Gesetz über die Zwangsversteigerung und die Zwangsverwaltung)*

A. Chapter 1:

Fundamental Principles in the Enforcement of Civil Judgments

The International Union of Judicial Officers (*Union internationale des huissiers de justice,* hereinafter referred to as *"UIHJ"*) is a non-governmental organization which was established in 1952 by seven European countries and more than 65 years later (May 2018), it has 91 members or organizations, spread over four continents.[1] The UIHJ is a member of UN Economic and Social Council. It participates in the work of The Hague Conference on Private International Law, particularly in the preparation of conventions relating to the service and notification of judicial documents and enforcement. It has played an active role in the creation of the profession of independent judicial officer in Central and Eastern Europe, Africa, in the Americas, particularly in the USA, in South America, in the Caribbean zone, and Asian countries.[2]

For Vietnam, in the past, within the framework of international cooperation and thanks to the financing of the European Union, Vietnam has been assisted by the UIHJ in improving the law on ECJs and enhancing the teacher's capacity in training executors. For example, in 2008 in Hanoi, the UIHJ and the Ministry of Justice of Vietnam organized the workshop titled: Towards a Body of Independent Judicial Officers in Vietnam and then had a two-days training course on improving the teacher's capacity in training the enforcement agents.[3] In 2012, also in Hanoi, the UIHJ and the Ministry of Justice of Vietnam co-organized the workshop for Vietnamese enforcement experts. The main topics of discussion were the European best practices and standards on enforcement, experiences with the self-employed enforcement agents (a pilot has been set up in Ho Chi Minh City) and implementation of these best practices and experiences in the Vietnamese enforcement system.[4] However, these assistances are still very limited compared to the considerable need to improve the Vietnamese civil judgment enforcement system in the context of Vietnam and Europe signed FTA and IPA.

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[1] *The UIHJ*: The Preamble of the 23 International Congress of the UIHJ, 1 to 4 May 2018.

[2] *The Scientific Council of the UIHJ*: The Preamble of the GCE, 2016.

[3] https://www.uihj.com/en/towards-a-body-of-independent-judicial-officers-in-vietnam_1018905.html.

[4] https://www.uihj.com/en/workshop-for-vietnamese-enforcement-experts-in-december-2012_2161034.html.

The UIHJ organizes an international congress every three years aims at providing an occasion to reflect upon and discuss future developments. One of the most important international congresses concentrated on the law of enforcement, which was "Harmonization of enforcement procedures in an area of justice with no boundaries" organizing in Washington of 2006, giving the birth of the Global Code of Enforcement (hereinafter referred to as "the GCE").

The GCE is the result of a sustained collective effort by the UIHJ. It represents the points of convergence of all systems of enforcement and it was carried out by the Scientific Council of the UIHJ, which consists of university professors, senior judges, lawyers specializing in international law, all having experience dealing with enforcement professionals. The GCE contains the definition of a set of practices that allow the enforcement of enforceable titles to be structured, in which there are fundamental principles in the enforcement of civil judgment(s) (hereinafter referred to as "ECJ(s)"). There is a fact that civil enforcement procedures not only relate to the sovereignty of each State but also comprise cultural, social and economic aspects that make it necessary to respect specific national particularities. The GCE concerns the principles that must be universally recognized governing the various procedures making it possible to constrain, under legal conditions to put the executory title into effect. Finding and definition a coherent set of principles common to all systems for enforcing enforceable titles is one of the primary tasks of the GCE, e.g., the principle of seizing all the goods belonging to a debtor without waiting and without being required to start new proceedings for enforcement (except in the case of assets not subject to distraint) or the principle in which the debtor is answerable for his debts on all his goods.[5] Recently, the World Enforcement Conference of Shanghai addressed:

"Enforcement organs should conduct research on enforcement principles, improve enforcement systems, explore widely-used enforcement regulations, and ensure regulated operation of enforcement powers".[6]

The GCE introduces modern concepts, e.g., "amicable" enforcement, "participatory" enforcement, and "soft" enforcement and contains the guidelines in the variety of the international regulations, e.g., the regulations of EU and CoE, the Hague Conference on Private International Law, Ohada, ALI and Unidroit,[7] etc. The right to the effective enforcement of enforceable titles is a key tool for economic development in the world.

Previously, enforcement of judgments was not widespread concerned both at the state level and at the international level. The notion of "enforcement" rarely appeared

[5] *The Scientific Council of the UIHJ*: The Preamble of the GCE, 2016.

[6] *The UIHJ*: The World Enforcement Conference of Shanghai, China, 2019, Point 8.

[7] https://www.unidroit.org/about-unidroit/overview.

in the international law forums and it seemed that there was no strong connection between the enforcement and the international law. The situation has changed considerably since legal scholars, legal scientists and national governments have realized that the concept of enforcement also has a close relationship with the international law, especially with human rights, economic factors and the fundamental rights. The convergence between the enforcement law and the international law will continue to develop.[8] According to the World Bank's Reports, the renewed economic growth is highly dependent on the enforcement laws, in which the protection of the investors, cross-border trade and resolving bankruptcy play a key role. There is a causal relation between the doing business and the contract enforcement. The economic development is directly affected by the complexity and costs of regulatory processes, procedures, delays and the cost of resolving commercial disputes. In order to encourage the completion, growth and job creation, the satisfactory legal environment must be flourishing and rigorous.[9] The LTP and the EBRD have studied and recently shown that the implementation of the law in many countries remains fraught with difficulties, in which the poor implementation of court decisions is one of the most troubling together with corruption. It has widely recognized that the negative impact of ineffective enforcement of decisions on the investment climate and the rule of law, including the right to a fair trial under international law.[10] A recent research has also indicated that

"A lack of effective enforcement mechanisms has a corrosive effect on the investment climate and the rule of law, deterring local and foreign investment".[11]

Naturally, in the context of globalization and international integration, the enforcement of court decisions or enforceable titles have become more and more essential as a result of the need for the free movement of goods.[12] The enforceable protection of credit with a wide range of growing not only within the country, but

[8] *Kerameus, Konstantinos D.*: Enforcement in the International Context, 1998, p. 197-198.

[9] *The scientific Council of the UIHJ*: GCE, 2016, p. 129.

[10] *Colman, Alan/Birken, Marie-Anne*: The World Bank Legal Review, Vol. 7, 2015, p. 241.

[11] *Colman, Alan/Bradautanu, Veronica*: Enforcing Court Decisions in the CIS, Georgia and Mongolia, 2014, p. 35.

[12] For example, FTA and IPA were signed between the EU and Vietnam on 30 June 2019, in Hanoi, in which the FTA between the EU and Vietnam is the most ambitious free trade deal ever concluded with a developing country. It provides for the almost complete (99%) elimination of customs duties between the two blocks. 65% of duties on EU exports to Vietnam will disappear as soon as the FTA enters into force, while the remainder will be phased out gradually over a period of up to 10 years. As regards Vietnamese exports to the EU, 71% of duties will disappear upon entry into force, the remainder being phased out over a period of up to 7 years, available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/06/25/eu-vietnam-council-adopts-decisions-to-sign-trade-and-investment-agreements/>.

also at the supranational level and on a global scale.[13] Opening address at the 19th Washington Congress 2006, Jacques Isnard stated that

"There is no State, without law, no law without judges, and no judgment without judicial officers".[14]

Supporting for the role of the enforcement of court decisions, the Resolution No. 3 of the 24th Conference of European Ministers of Justice held in Moscow on 4 and 5 October 2001 insisted that the proper, effective and efficient enforcement of court decisions is of capital importance for States in order to create, reinforce and develop a strong and respected judicial system.[15] A new study has also shown as follows:

"In fact, as many claimants quickly realize, obtaining a judgment is only half the battle and probably the least problematic stage in civil proceedings, while enforcing that judgment is likely to prove more problematic".[16]

The analysis in Chapter 1 below will address some fundamental principles of the enforcement in accordance with the international standards in which the GCE plays a leading role and its real situation in Vietnam.

I. The right of enforcement must be respected as a fundamental right

1. The international regulations on the right of enforcement and fundamental rights

Under the GCE, the concept of "enforcement" can be understood as giving effect in accordance with the law, to an enforceable title that requires a person to do, or abstain from doing, or to pay that which has been decided.[17] Meanwhile, Recommendation Rec (2003)17 of 9 September 2003 defines that "enforcement" means the putting into effect of judicial decisions, and other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged.[18]

The fundamental right is a common concept in all European countries where there are varieties of institutions established for the promotion and protection of fundamental rights. Moreover, the fundamental rights are codified in multiplicity of

[13] *Djankov, Simeon/Hart, Oliver/Mcliesh, Caralee/Shleifer, Andrei*: Debt Enforcement around the World, Journal of Political Economy, Vol. 116, No. 6 (2008), p. 1105-1149.

[14] *The Scientific Council of the UIHJ*: GCE, 2016, p. 115.

[15] *CoE*: Multilateral Seminar on the Role, Organization, Status and Training of Bailiffs, Varna (Bulgaria), 2002, Final Version 2003, p. 6.

[16] *Kagiorgi, Eleftheria Maria*: Winning in Court is Only Half the Battle, Dissertation, University of Kent, 2015, p. 3.

[17] *The Scientific Council of the UIHJ*: GCE, 2016, p. 202.

[18] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Guiding Principle I.a.

binding Bills of Rights.[19] In order for the protection of fundamental rights, Europe has established the existence of three layers including the state, supranational *(EU)* and international *(ECHR)* norms and institutions. For instance, the ECtHR protects the fundamental right to effective enforcement by giving a list of striking cases, e.g., Horsnby vs. Greece (1997),[20] Guincho vs. Portugal (1984),[21] Martin vs. Portugal (1988),[22] Estima Jorge v. Portugal,[23] Immobiliare Saffi v. Italy,[24] etc.[25] The right of enforcement and a fundamental right have a close relationship, Art. 1 of the GCE regulates that:

"Every creditor who is the holder of an enforceable title, whether judicial or extra-judicial, has the right to effective access to its enforcement in respect of his defaulting debtor, in strict compliance with the conditions laid down in the law and subject to the immunities from enforcement provided for in national and international law. This right is granted without discrimination and regardless of the amount of the claim".

First and foremost, the GCE emphasized the right of enforcement that must be respected and regarded as a part of fundamental right not only by the international laws but also the national ones. At the global level, there are a variety of international legal instruments mentioning to the right of enforcement. The first requirement is stated in the ALI/Unidroit Principles of Transnational Civil Procedure. Procedures should be available for speedy and effective enforcement of judgment including monetary awards, costs, injunctions, and provisional measures.[26] In fact, the laws on enforcement of judgment in many countries are still outdated and inefficient; do not meet the requirements of the international laws. The ALI/Unidroit 2016 C.D. (95) 13 rev. of the Governing Council 95th session Rome, 18-20 May 2016 continues to address that

"The right to effective enforcement of judgments (and arbitral awards) represents an integral part of the fundamental right to a fair and effective procedure. Moreover, the economic significance of effective enforcement mechanisms embraces decision-making and execution and was considered by the World Bank as well as an

[19] *Craig, Paul/De Búrca, Gráinne*: Fundamental Rights in Europe, 2014, p. 4-5.

[20] Hornsby v. Greece, 107/1995/613/701, judgment of 19 March 1997.

[21] Guincho vs. Portugal, Application no. 8990/80, judgment of 10 July 1984.

[22] Martin vs. Portugal, Application No. 11371/85, judgment of 26 October 1988.

[23] Estima Jorge v. Portugal, 16/1997/800/1003, judgment of 21 April 1998.

[24] Immobiliare Saffi v. Italy, 22774/93, judgment of 28 July 1999.

[25] *Craig, Paul/De Búrca, Gráine*: Fundamental Rights in Europe, Challenges and Transformation in Comparative Perspective, 2014, p. 4-7.

[26] *The ALI/Unidroit*: The 2004 Principles of Transnational Civil Procedure, Principles No. 29.

increasing number of national governments a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes".[27]

In addition, under some case laws of the ECtHR, various valid conclusions can be given as follows: The right to the effective enforcement is considered as an integral part of fair process.[28] The right of enforcement can be compared with a key element to a fair trial.[29] Or one of a necessary and constant element of the rule of law is the enforcement of judicial decisions.[30] At the European level, the rule of law cannot be ensured without fair, efficient and accessible judicial systems.[31] At the national level, e.g., in Germany, the effective enforcement is inseparable from the principle of the rule of law.[32] Furthermore, Recommendation Rec (2003)17 of 9 September 2003 and the Guidelines for a better implementation of enforcement of 17 December 2009 (CEPEJ(2009)11REV2) emphasized the decisive role of the court user and the enforcement agent to an effective and fair enforcement process.[33] Recommendation Rec (2003)17 of 9 September 2003 considers the enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time in accordance with Art. 6 of ECHR. In addition, the Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002, also insists that

"All judicial decisions shall be executed in an effective manner and within a reasonable time-limit".[34]

These international standards help to ensure a common understanding of what is required and what must be measured in order to achieve the desired efficiency of enforcement services and equality before the law.[35]

Art. 7 of the African Charter on Human and People's Rights declares that

"The individual shall have the right to have his cause heard. This comprises the right to an appeal to competent national organs against all acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force…".

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[27] Principle 77.

[28] The Hornsby v. Greece Decision of 19 March 1997.

[29] ECHR, 27 June 2000, No. 32842/96, Nuutinen v. Finland.

[30] The dissenting Opinion of Judge Zupanic, joined by Judges Pantiru and Türmen.

[31] *The CEPEJ*: The Preamble of the Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002.

[32] Art. 20 (3) GG; *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, p. 7, Rn. 2.

[33] *The Scientific Council of the UIHJ*: GCE, 2016, p. 140-141.

[34] *The CEPEJ*: Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002, Principle I.3.i.

[35] *Gramckow, Heike*: Good Practices for Monitoring the Effectiveness of Enforcement Actions and Assessing the Performance of Bailiffs, 2014, p. 54.

In order to protect the right of enforcement, according to this requirement, the national laws and regulations must regulate that the right of enforcement is a fundamental right and have an effective mechanism for protecting them.

In EU, the enforcement procedure must be simple, fast, relatively uniform.[36] The right of enforcement must also be highly protected under EU Law.[37] For example, Regulation (EU) No. 655/2014 aims at protecting the right of enforcement by simplifying and speeding up the recovery of cross-border claims. In Germany, the primary purpose of the full and rapid enforcement work is to protect the fundamental right of the judgment creditor (hereinafter referred to as "the JC") under the Art. 14 (1) GG.[38] This article states that property and the right of inheritance shall be guaranteed. Their contents and limits shall be defined by the laws. In the field of the enforcement work, this article guarantees the right to property in favor of both the JC and the judgment debtor (hereinafter referred to as "the JD"). In the course of enforcement proceedings, it is perhaps worth noting that taking complete satisfaction the benefits of the JC is the most important purposes, but at the same time taking into consideration to protect the property owner's rights of the JD under the general rule of law, including the lawfulness, necessity, suitability and appropriateness.[39]

2. Vietnamese regulations on the right of enforcement and the fundamental rights

A special concept, popular in the field of civil judgment execution in Vietnam which is "civil judgment execution/enforcement, (hereinafter referred to as "CJE") or enforcement of civil judgment". Currently in Vietnam there are many different points of view on this concept, e.g., CJE is the process of conducting activities to implement judgments and decisions of the court that have taken legal effect. Litigation is the process of finding the truth in order to apply justice (law), while CJE is the process of carrying out the truth by justice. Here the truth is clear, guilty or innocent, right or wrong that has been clearly judged, enforcement only to carry out the judgments and decisions of the court that have taken legal effect.[40] Another view considered a CJE is a form of administrative-judicial activity aims at implementing fully and promptly the civil judgments and decisions which have taken legal effect of courts by CJE agencies, executors under the order and procedures prescribed by law.[41] Meanwhile, an "enforce" term is a verb which means to make into effect thing has been officially decided.[42] While international legal documents contain the

[36] The Commission Published and EU Justice, Scoreboard on 27 March 2013.

[37] TPI, 19 March 1997, case J-73/95, Mentos Isidore M. Oliveira.

[38] *Gaul/Schilken/Becker-Eberhard*: Zwangsvollstreckungsrecht, 12. Aufl. 2010, §3, Rn. 1, p. 28.

[39] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 7.2, p. 82.

[40] *Le, Minh Tam*: Trying to Discuss some Theoretical Issues about Enforcement, 02-2011, p. 2.

[41] *Nguyen, Thanh Thuy*: Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 22.

[42] *Hoang, Phe*: Vietnamese Dictionary, 2003, p. 936.

concept of “enforcement”, Vietnamese law has not had any provisions stipulating and explaining the concept of "execution/enforcement”, “judgment enforcement”, or “civil judgment enforcement” in the formal legal documents or guiding documents. This is also a difficulty when comparing the CJE of Vietnam with the international standards on the execution in term of concept or its meaning, as well as other related terms, e.g., “right of enforcement”, “enforceable titles”.

The introduction of the Resolution No. 49-NQ/TW addresses that

“The demands of the people and society upon judicial organs are raised, in the sense that the former must be a place for the people to turn to when seeking justice or the protection of human rights, as well as an efficient tool to uphold the law and socialist legality and fight effectively against crime and offences. At the same time, this Resolution also requires building Vietnam’s socialist rule-of-law State of the people, by the people, and for the people; improving judicial procedures to ensure that they will be consistent, democratic, and transparent, as well as respect and protect human rights”.[43]

Based on this judicial strategy, Art. 22 Para. 1 Constitution of Vietnam regulates that

“In Vietnam, human rights and citizens’ rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law.[44]

Some fundamental rights have related to the right of enforcement, according to the Constitution, including the right to inviolability of his or her body and to the protection by law of his or her health, honor and dignity, the right to inviolability of home or the right to ownership of lawful income, etc.[45] For example, under the Constitution of Vietnam, every citizen has the right to a legal residence. Everyone has the right to inviolability of his or her home. No one may enter the home of another person without his or her consent. The search of homes shall be prescribed by a law.[46] In order to protect the rights and benefits of the debtor when distraint of houses, under the 2014 Law on Enforcement of Civil Judgments of Vietnam, (hereinafter referred to as “the LECJ”), the seizure of a house being the sole residence of a JD and his/her family may be conducted only after this person has been determined to have no other assets or have assets which are insufficient for judgment enforcement, unless the JD agrees to have his/her house distrained for

[43] Section II. 1. (1.1).

[44] Art. 22 Para. 1.

[45] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 26, p. 178.

[46] Art. 22.

judgment enforcement.[47] In case of coercive handover of a house being the sole residence of the JD to a person who has purchased it through auction, if finding that the JD, after fulfilling judgment execution obligations, becomes unable to rent or to build a new home, the enforcer (hereinafter the concept of enforcer or executor will be virtually interchangeable) shall, before carrying out procedures for paying to the JC, retain a sum of money from the house sale proceeds for the JD to rent a home for one year at the average rental rate in the locality.[48] In actual fact, there is an enormous backlog relating to this article whereby enforcement agency of Vietnam cannot deal with. In cases where the JDs fail to receive money for renting and they also have no other places to live, the executors shall rent the house to the JDs. Thus, if the expiry of the period of one year from the date of enforcement, the JD cannot have a new residence or sign another agreement with the lessor, the lessor may file a lawsuit against the executors in order to reclaim rental housing. These situations have caused major difficulties for the enforcement agencies.[49]

In addition, according to the LECJ, in case JDs are obliged to return house, enforcers shall compel JDs and other persons present in these houses to get out, and at the same time request them to move by themselves their assets out of these houses. If these persons fail to voluntarily abide by enforcers' requests, enforcers shall request coercion forces to move them and their assets out of these houses.[50] In fact, the JD often lives with his/her relatives who are elderly people, single people, and dependent. If the JD becomes unable to rent or to build a new home, the enforcer shall, before carrying out procedures for paying to the JC, retain a sum of money from the house sale proceeds for the JD to rent a home for one year (Art. 115 Para. 5 of the LECJ). This article only guarantees the residence for only the JD, it does not guarantee the residence and life for the whole debtor's family under the minimum conditions. In these circumstances, the debtor and his/her relatives will not have a home to live if the judgment is enforced. On the contrary, if the judgment is not enforced, the judgment enforcement proceedings will be delayed, and the benefits of the JC will be affected. As a result, many enforcement cases have been delayed for a long time. In these situations, the fundamental right of the JD and his/her family may not be guaranteed by the constitution. One of the root causes here is that there is a huge gap between the constitution's regulations and the regulations in the enforcement law, even between the enforcement law and its guiding documents.[51]

[47] The LECJ, Art. 95 Para. 1.

[48] The LECJ, Art. 115 Para. 5.

[49] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 115, p. 546.

[50] Art. 115 Para. 1.

[51] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 115, p. 546-547.

While the constitution is too general, the provisions of the enforcement law are not only unclear but also not intricate enough.[52] On the contrary, the experience of the German constitution is valuable, in which the Constitution applies the subsidiarity principle to protect the fundamental right of the debtor and his/her family based on the petition to the constitutional court, in which the jurisdiction requires to remedy violations of fundamental rights in the course of self-correction with so-called "extraordinary remedies".[53] For example, the German welfare State according to the Art. 20 (1) GG not only serves the rights of the JCs, but also protects the fundamental right of the JDs.[54]

Finally, both the right to enforce judgment and the fundamental right of the citizen are accurately reflected in the judgment and therefore, respect for the judgments or court decisions means that respect the right of enforcement as well as the fundamental rights. In Vietnam, not only the Constitution, but also both the CPC 2015 and the LECJ are required to respect the court judgment. Firstly, the 2013 Constitution of Vietnam provides that the sentence and the decision of the people's court which have legal effect must be respected by organs, organizations and individuals; the organs, the organizations and the individuals concerned must be seriously implemented.[55] In detail, the CPC 2015 requires the legally effective judgments, decisions of courts must be enforced and observed by all citizens, agencies, and organizations. Individuals, agencies and organizations that have the obligation to execute the courts' judgments, decisions must strictly execute them.[56] Finally, according to the LECJ, the judgments and rulings shall be respected by agencies, organizations and all citizens. Concerned individuals, agencies and organizations shall, within the ambit of their respective responsibilities, strictly abide by the judgments and rulings and take responsibility before law for the enforcement thereof.[57]

It appears that the above regulations on respecting the judgments or court decisions are the generic term political and somewhat ineffective in practical application. In fact, the social insurance, banks and other credit institutions, land use right registration offices, and any other agencies, organizations and individuals might often fail to comply with the requests the enforcement agencies or delay to reply

[52] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 99-100.

[53] *Gaul/Schilken/Becker-Eberhard*: Zwangsvollstreckungsrecht, 12. Aufl. 2010, §3, Rn. 6, p. 30 and § 90 (2) S. 1. BVerfGG.

[54] *Baumbach/Lauterbach/Albers/Hartmann*: Zivilprozessordnung, 76. Aufl. 2018, §704, Rn. 8, p. 2061.

[55] Art. 106.

[56] Art. 19 Para. 1.

[57] Art 4.

these requests for a variety of reasons.[58] Although, the LECJ requires the rights and legitimate interests of involved parties and persons with related rights and obligations shall be respected and protected by law in the course of judgment enforcement.[59] However, in practice the effectiveness of this principle may have proved fruitless. One of the practical illustrative examples is that the number of outstanding civil judgments that has not yet been enforced over the years, is very high, with approx. 200 thousand backlogs,[60] and always maintains over 200,000 backlogs that have not been implemented since 1998, fluctuating on average from over 200,000 to 350,000 unexecuted cases and transferring to the following year.[61] Until the end of 2017, after 12 months of 2017, across the country, unenforceable judgments still remain high with over 320,000 cases have not been enforced, were transferred to the following year.[62] Similarly, until the end of 2018, after 12 months of 2018, across the country, unenforceable judgments still remain higher with over 340,000 cases have not been enforced, were transferred to the following year.[63]

In order to protect effectively the fundamental rights of the citizens in general and the right of enforcement in particular, on 24 September 1982, Vietnam has ratified two important Covenants of the UN, which are the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.[64] Notwithstanding the fact that, the Vietnamese government has also active attitudes about the protection of the fundamental rights in the last time, detailed research on the Constitution of Vietnam and Vietnamese laws, it is undeniable that the legal system and the Constitution of Vietnam have not yet directly stipulated the right of enforcement was to be considered as an integral part of the fundamental right to a fair trial within a reasonable time.[65] Meanwhile, this opinion was recognized and applied widespread in all European countries by the European Convention on the Human Rights.[66] Therefore, there are considerable

[58] See A. Chapter 1.III.2.

[59] The LECJ, Art. 5.

[60] Report No. 112-BC/BCS, p. 23 and Report No. 63/BC-BTP, p. 14.

[61] *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 134.

[62] *The General Department of Civil Judgment Execution, Ministry of Justice, Vietnam*: Report No. 177/BC-TKDLCT.

[63] *The General Department of Civil Judgment Execution, Ministry of Justice, Vietnam*: Report No. 170/BC-TKDLCT.

[64] *Nguyen, Van Nghia*: Ensuring Human Right in Judgment Execution, Democracy and Law Journal, 2006, p. 182.

[65] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 1, p. 11-15;

Nguyen, Van Nghia/Hoang, Thi Thanh Hoa: Legal Mechanisms to ensure the Enforcement of Civil Judgments and Rulings having taken legal effect, Jurisprudence Journal, 06 (217), 06-2018, p. 3-4.

[66] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 84.

difficulties and disadvantages in the protection of the fundamental rights and the right of enforcement in the course of enforcement.

II. The debtor is answerable for his debts on all his goods

1. International standards on the transparency of assets

According to the Art. 2 of the GCE, the debtor has responsibility for answering his debts on all his goods wherever these are to be found. National laws can require the debtor to declare the extent of his estate. They must provide sanctions applying for the debtors if they violate their obligation. The debtor who negligently organizes his insolvency, makes himself liable.

First, this regulation requires the debtor to disclose all his goods, which is his/her legal obligation. The information concerning the debtor's assets for the enforcement proceeding is one of the crucial and decisive factors relating to the effectiveness of the judgment enforcement process. The level of transparency that can be reached on the assets of the debtor is one of the most important issues.[67] Who can and should provide factual and evidential material about the debtor's assets for the purpose of enforcement activities? Does the creditor have to seek for the relevant information about the debtor's assets or is the debtor really under a duty to cooperate with the enforcement organ to provide all relevant information to facilitate the enforcement proceedings? These are particularly difficult questions for any enforcement jurisdictions and different systems give different answers.[68] In fact, the problem of enforcing civil judgment will become extremely difficult if the defendant's assets are hidden or dissipated deliberately or the debtor intents to conceal his assets. In certain other states, it is called "*black holes"* into which a defendant and his assets can disappear.[69] With regards to declaring the assets, whether the debtor must disclose all his/her assets or to disclose only sufficient his/her assets is still a huge question. In most jurisdictions, there are two different models of the declaration.[70] The first model tends to protect the creditor and this type obliges the debtor to disclose all his/her assets while because of the principle of proportionality, the second pattern respecting the principles of the protection of the debtor's privacy by limiting his

[67] *Mads, Andenas/Hess, Burkhard/Oberhammer, Paul*: Enforcement Agency Practice in Europe, 2005, p. 47.

[68] *Perez-Ragone, Álvaro*: International Association of Procedural Law, 2014, p. 639-643.

[69] *Kennett, Wendy*: The Enforcement of Judgments in Europe, 2000, p. 99;

Nguyen, Van Nghia, Information about the Property of the Judgment Debtor seen from the Experience of the Federal Republic of Germany, The Electronic Portal of General Department of Civil Judgment Enforcement, Vietnam, 27 June 2017.

[70] *The Commission of the European Communities*: Green Paper on effective Enforcement of Judgments in the European Union: The transparency of Debtors' assets, Brussels, 6.3.2008 COM (2008) 128 final, p. 11; *Kengyel, Miklós*: Transparency of Assets and Enforcement, Vol. 19, 2014, 308-321, p. 315.

obligation to assets sufficient for the recovery of the creditor's claim.[71] According to some international legal documents, there are two options of declaring the debtor's assets, which are disclosing all information about the debtor's assets or disclosing solely the necessary information.[72] For instance, most jurisdictions in the European countries, where a debtor's declaration exists, disclosing all assets is a mandated responsibility of the debtor.[73] Even in some European countries, e.g., Austria, Germany and England, the territoriality does not apply to the debtor's declaration, which means that the obligation of the debtor to deliver an affidavit is not limited to his domestic assets, but he/she must disclose his/her entire assets, including those abroad.[74] In contrast, in a few countries, e.g., in Portugal, in Spain or in Denmark, the debtor must disclose only his enough value for the enforcement of the creditor's claim.[75] The second situation can be burdensome for the creditor if enforcement measures fail. Under the Uniform Act:

"Seizures may be carried out on all property is held by a third party, save where it has been declared inalienable by the national law of each Contracting State. They may also be carried out on conditional claims, future debts or successive execution debts" (Art. 50).

And furthermore, sequestration may be carried out on all the tangible or intangible personal property belonging to the debtor. It shall render such property inalienable.[76]

Another essential requirement is that the debtor is answerable for his debts whenever and wherever these are to be found. According to the Green Paper Com (2008) 128 final, the starting point of enforcement proceedings is counted when the search for the debtor's address and/or for information about his financial situation. The debtor must disclose his assets until the creditor is satisfied with his claim. This period is not restricted, however the timelines for enforcement procedures should be reasonable. The European Commission also recommends that member states should not impose any arbitrary cutoff deadlines for enforcement to end.[77] In order to secure the provision of information to the creditor, Art. 14 of the Regulations (EU) No.

[71] *The European Parliament and the Council*: Directive 95/46/EC (e.g., Art. 6, 7); *Hess, Burkhard*: Study No. JAI/A3/2002/02 on making more efficient the Enforcement of Judicial Decisions within EU, p. 36.

[72] The GCE, Art. 2, p. 142-143; *The Commission of the European Communities*: Green Paper on effective Enforcement of Judgments in the European Union: The transparency of Debtors' Assets, Brussels, 6.3.2008 COM (2008) 128 final, p. 12.

[73] *Hess, Burkhard*: Study No. JAI/A3/2002/02 on making more efficient the Enforcement of Judicial Decisions within EU, p. 35.

[74] *The Commission of the European Communities*: Green Paper on effective Enforcement of Judgments in the European Union: The Transparency of Debtors' Assets, Brussels, 6.3.2008 COM (2008) 128 final, p. 12, fn. 47.

[75] *Hess, Burkhard*: Study No. JAI/A3/2002/02 on making more efficient the Enforcement of Judicial Decisions within EU, p. 35.

[76] The Uniform Act, Art. 56.

[77] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, Point 63.

655/2014 allows a creditor who is the holder of an enforceable title to request the court to which he has applied for a preservation order (conservatory seizure) to request the authority responsible for obtaining information in the Member State where the title must be enforced, in order to obtain the information necessary for identifying the bank or banks and account or accounts of the debtor. However, this is subject to some restrictive conditions.[78]

2. Information about the judgment debtor's assets in Vietnam

Under the LECJ, the disclosure information about the debtor's assets depends on the types of enforcement mechanism. In Vietnam, there are two types of enforcement mechanisms, comprising the enforcement agreement between the creditor and the debtor about the enforcement of judgments or the judgment will be enforced by the enforcement agents if they fail to reach agreement on judgment execution or the JD fail to voluntarily enforce the judgments. If the creditor and the debtor reach agreement on judgment enforcement, outcomes of judgment enforcement under agreements will be recognized by the enforcement agencies.[79] They may request the enforcement agencies to certify judgment enforcement results.[80] In general, in these cases, all the relevant information about the debtor's assets may not necessary, provided that agreement does not violate the prohibitions prescribed by law and is not contrary to social morality. Otherwise, if judgment is enforced by the enforcement agencies, they have legal responsibilities for searching for information about the debtor. Simultaneously, the creditor may also provide any relevant information about the debtor for the enforcement agents.

There is a fact that, searching for information about a debtor's assets is a problem encountered with many legal systems and Vietnam is unexceptionable. For example, in case of resisting payment by a debtor, the creditor may encounter with difficulty in identifying his whereabouts, his employment details if relevant, and the other assets that belong to him and their location. In addition, it is getting more and more challengeable to obtain information about a debtor if the debtor's home, his land use rights, any other substantial assets, e.g., cars, ships he possesses, or his outgoings may be in the name of a third party. Similar situations have ever happened at different levels in many countries around the world, where JDs are able to frustrate the enforcement process with relative impunity, moving or hiding property, or siphoning money out of bank accounts.[81] Some common tricks are the ease and

[78] OLG Hamm, NJW 2019, 1235.

[79] The LECJ, Art. 6.

[80] The LECJ, Art. 53.

[81] For example, the countries of operations of the EBRD, including Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Arab Republic of Egypt, Estonia, Georgia, Greece, Hungary, Jordan, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Lithuania, the former Yugoslav Republic of

tunneling, whereby, the JDs can use different names to open new accounts into which they transfer funds, or transfer assets to a third party after legal proceedings are initiated but before enforcement proceedings are initiated.[82] The following contents will study some aspects of the information about the debtor's assets relating to the protection of the rights and benefits of the involved parties in Vietnam.

The enforcement law of Vietnam provides that the time limit for voluntary execution of a judgment is 10 days after the JD receives or is properly notified of the judgment enforcement decision.[83] Within 10 working days after the deadline for the voluntary execution of a judgment, if a JD fails to voluntarily execute the judgment, an enforcer shall conduct the verification. In case of implementation of a decision on the application of provisional urgent measures, the verification must be conducted without delay.[84]

Thus, within the period as mentioned above (excluding the time for issuing the judgment execution decisions, the time for sending the judgment execution notices, and the time period calculated from the date when the JD receives the court judgment or the court decision until they file them to the enforcement agency), the JD must provide initial information about his/her property to the enforcement agency. After such a quite long period of time, the JDs must be obliged to provide information about their assets, which is apparently unreasonable in case the JDs try to postpone or delay executing the judgment after the court judgment was rendered, but they even had dispersed the property before the judgment or decision of the court was rendered. Below is an enforcement case in Vietnam. According to the decision No. 16/DSST dated 16 March 2015 of the X district people's court, the debtor S had to repay the creditor G the amount of VND 390,000,000 and the interest rate of delayed. The process of verification indicated that S has a property which is a land area of 342m^2 in the district Y. However, at the previous time, on 6 March 2015, the debtor S had made a notarized contract donated this plot of land to his son (called Mr. D), and after that on 14 March 2015, the land was completed the transfer at the land use right registration office, just before the court judgment was rendered 02 days (the court judgment was rendered on 16 March 2015).[85] Similarly, this situation has ever occurred in the CIS, whereby assets were sold or transferred to a third party after

(FYR) Macedonia, Moldova, Mongolia, Montenegro, Morocco, Poland, Romania, the Russian Federation, Serbia, Slovak Republic, Slovenia, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, and Uzbekistan.

[82] *Fariello, Frank/Boisson de Chazourmes, Laurence/E. Davis, Kevin*: The World Bank Legal Review, Vol. 7, p. 245-246.

[83] The LECJ, Art. 45 Para. 1.

[84] The LECJ, Art. 44 Para. 1; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 44, p. 252;

[85] *Nguyen, Van Nghia*: Vietnamese Law and International Experience on Providing Information about the Assets of the Judgment Debtor in the ECJs, Democracy and Law Journal, Vietnam, No. 10 (307) 2017, p. 39.

legal proceedings had been initiated but before enforcement proceedings commence. The law in this area does not always provide for "clawback" of assets.[86]

From the above example, clearly that when the JDs must provide information about his/her assets to the enforcer and/or to the JCs, his/her assets involved in the judgment enforcement had already transferred to other people. Accordingly, the time to start providing information about the property is too slow.[87] In addition, there are no provisions on the responsibility of the debtor to provide information about the economic transactions during the period surrounding between the JDs and their relatives.[88] In the meantime, the JDs take advantage of the limitations of the enforcement law to disperse their assets in order to evade the enforcement of judgments. For example, the judgment relating to the debts of the credit institution accounts for a large amount of money to be executed (over VND 99,000 billion accounting for 61% of the total amount to be enforced through the country) but the enforcement result was only 28%, has significantly affected the results of the execution. The conditions of judgment execution of the most cases are still faced with enormous difficulties because the value of the judgment is large, but most of the property has been hidden, rationalized or dispersed, so the property is used to secure the execution or property of judgment execution is very little or even do not have property to enforce the judgment. In the case of Pham TB, Chairman of Vinashin Group had to enforce a judgment of more than VND 600 billion, but in fact, the judgment enforcement property was only VND 5 billion.[89] Even in the case of Pham TB and Tran VL, according to the Decision on executing the judgment No. 43/QD-CCTHADS dated 7 November 2016 of Sub-department of civil judgment execution X-HN district, the total value to be enforced was nearly VND 1,000 billion (approx. € 38 million), but the judgment execution result was VND 0, (had not enforced yet any items). Having verified the judgment execution conditions as prescribed, verification results showed that the JD Pham TB and Tran VL have been serving long-term imprisonment penalties, they had no assets for enforcement of the judgments. Based on the results of verification of judgment execution conditions, head of the sub-department of civil judgment enforcement X-HN rendered decision No. 23/QD-CCTHADS dated 22 February 2017 on lacking judgment execution

[86] *Colman, Alan/Bradautanu, Veronica*: Enforcing court decisions in the CIS, Georgia and Mongolia, 2014, p. 42.

[87] *Nguyen, Van Nghia*: Vietnamese Law and International Experience on Providing Information about the Assets of the Judgment Debtor in the ECJs, Democracy and Law Journal, No. 10 (307) 2017, p. 39; *Nguyen, Van Nghia*: Information about the Property of the JD seen from the experience of the Federal Republic of Germany, the Electronic Portal of General Department of Civil Judgment Enforcement, 2017.

[88] *Nguyen, Van Nghia*: Responsibility to Information Provision of the Debtor's Assets in European Countries and in the Federal Republic of Germany, Legis. No. 01/2018, p. 63.

[89] *The Ministry of Justice of Vietnam*: Report No. 01/BC-BTP, Section II. 3.2, p. 5.

conditions for the amount to be enforced of nearly VN 1,000 billion mentioned above (Art. 44a of the LECJ).[90]

Besides the invaluable experience of the Federal Republic of Germany will be analyzed below, another experience of Georgia, which has a well-developed state enforcement service on this issue is that

"The debtor must provide an enforcement agent with a list of his or her property, including receivables, property held by third parties and claims against third parties, within five days of the writ of execution being issued".[91]

When verifying judgment execution conditions, enforcers request the JD to declare truthfully, to supply full information on his/her assets, incomes and judgment execution conditions with the judgment enforcement agency and to assume responsibility for his/her declaration.[92] If the JD fails to declare information concerning his/her assets or declare untruthfully, depending on the nature and severity of his/her violations, executors on their duty have the right to impose a fine or to request the competent people in administrative violation handling according to the regulation of the law.[93] If the JD fails to declare information concerning his/her assets or declare untruthfully, he or she will be imposed a fine from VND 1,000,000 (approx. € 38) up to VND 3,000,000 (approx. € 115).[94] This sanction for debtor failing to disclose information is usually ineffective owing to lack of strict fine because the amount of the fine is so insignificant that it is not a heavy penalty, therefore the JD often violates the obligation to provide information about his/her assets.[95] As a result, the law requires ample information gathering and publishing, but the practice is still to be put in place.[96]

In the course of enforcement, if the debtor refuses to disclose his assets, the enforcement organs or executors cannot apply the physical coercive measure according to the laws. In addition, the making of an incorrect or false declaration by the debtor is not considered as a criminal offence, so he/she might not be sanctioned by imprisonment under the criminal code.

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[90] *The Department of Civil Judgment Enforcement Hanoi*: Report No. 240/CTHADS-BC, p. 11.

[91] *Colman, Alan/Bradautanu, Veronica*: Enforcing court decisions in the CIS, Georgia and Mongolia, 2014, p. 41.

[92] The LECJ, Art. 44 Para. 1.

[93] Decree No. 62/2015/ND-CP, Art. 9 Para. 1.

[94] Decree No. 110/2013/ND-CP, Art. 52; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*, Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 88-89; <Foreign Currencies against Vietnam Dong, https://www.vietcombank.com.vn/ExchangeRates/?lang=en: € 1 ≈ VND 26,000, updated 13 August 2019>

[95] *Nguyen, Van Nghia*: Vietnamese Law and International Experience on Providing Information about the Assets of the JD in the ECJs, Democracy and Law Journal, No. 10 (307) 2017, p. 40.

[96] *Nguyen, Van Nghia*: Information about the Property of the Judgment Debtor seen from the Experience of the Federal Republic of Germany, the Electronic Portal of General Department of CJE, 2017.

It stands to reason that on the one hand, it is particularly difficult to request a debtor to disclose his/her assets may because of the extremely low fine levels. In these cases, the rights and benefits of the JC may be seriously affected because he/she cannot obtain the necessary information for enforcing judgments. On the other hand, the LECJ did not have enough detailed provisions for declaring on information about the debtor. It is unclear for the debtor to disclose all his/her assets or to disclose only sufficient his/her assets? Another drawback is that, resemble other legal systems in the developing countries, Art. 7a Para. 2 Sub-para. b of the LECJ requires the debtor to give information about his assets, but if attempts at enforcement have been or are likely to be unsuccessful, he/she is not required to attend a hearing to give the required information on solemn affirmation. She/he does not have to make an oath or pledge before the court or the enforcement agents about his declaration. These are major limitations of Vietnamese enforcement laws in comparison to the international standards.

In this regard, the enforcement law of the Federal Republic of Germany is feasible, consistent, comprehensive and viable, which is invaluable experience for Vietnam.[97] Whereby, the JD is obligated to furnish all information about his/her assets even the estate which is in possession of a third party.[98] Disclosure of all current information about the entire his/her assets is the responsibility of the JD, regardless of the level of assets will be distrained (§ 811a. ZPO).[99] In addition, § 802c ZPO and § 284 (2) AO regulates that the JD shall state all the assets belonging to him. It means that all assets of the debtor are subject to enforcement. This model of the declaration may overcome the major limitations of the declaration in which the debtor only has to disclose the limited assets which would be sufficient for the enforcement of the creditor's claim e.g., the limitation of the debtor's assets and the burden on the creditor as a result if he has to requested repeatedly to provide information about the debtor's assets.[100] Providing all property information does not mean that all such assets will be distrained for execution. Enforcement is used to satisfy the creditor. Therefore, according to § 803 (1) S. 2 ZPO, this may not be extended further than is necessary for the satisfaction of the creditor. This prohibition of surplus applies to moveable matters and rights, it is also applicable, if the subject matter and legal

[97] *Nguyen, Van Nghia*: Vietnamese Law and International Experience on Providing Information about the Assets of the JD in the ECJs, Democracy and Law Journal, No. 10 (307) 2017, p. 41-43; *Nguyen, Van Nghia*: Responsibility to Information Provision of the Debtor's Assets in European Countries and in the Federal Republic of Germany, Legis. No. 01/2018, p. 61-64; *Nguyen, Van Nghia*: Information about the Property of the Judgment Debtor seen from the Experience of the Federal Republic of Germany, the Electronic Portal of General Department of CJE, 2017.

[98] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 802c, Rn. 422, p. 706.

[99] *Dierck/Morvilius/Vollkommer*: Handbuch Zwangsvollstreckungsrecht, 2. Aufl. 2016, Rn. 122, p. 649; Rn. 124, p. 650.

[100] *Hess, Burkhard*: Study No. JAI/A3/2002/02 on making more efficient the Enforcement of Judicial Decisions within EU, p. 36; *Murray/Stürner*: German Civil Justice, 2004, p. 447.

pledges operate side by side.[101] In order to ensure the rights of the executors, the main cooperative responsibility belongs to the JDs in accordance with the law. Accordingly, at the beginning of the judgment execution procedure, the JDs must submit a list of assets along with their oath so that the executor can determine the valuable assets of the JD, from which to select appropriate judgment execution measures.[102] The debtor must state his/her positive assets. She/he does not have to make an overview of his debts. With bank accounts, which are kept "in the minus" is done with the note of "no credit" of the asset information enough. The property of the debtor, naturally, including movable and immovable property, entitlement to claims and rights as well as ownership of property.[103] According to § 807 ZPO, if the debtor has refused a search on his premises (§ 758 ZPO) or the efforts to attach assets have revealed that further enforcement will apparently not achieve the full satisfaction of the creditor, the debtor is obliged to immediate disclosure without prior notice pursuant to § 802f ZPO.

Furthermore, the JD has had an opportunity to provide information as defined in § 802c (3) ZPO, whereby the debtor is to record a statutory declaration in lieu of an oath *(eidesstattliche Versicherung),* stating that he has correctly and fully made the statements on his assets to the best of his knowledge and belief.[104] The *eidesstattliche Versicherung* will become a powerful tool in the JC's hands and will be also recorded in a central and public register.[105] If the debtor does not cooperate or refuse to appear at the hearing scheduled for the disclosure of information about his or her financial situation without an excuse, he or she can be arrested based on a warrant of arrest which can be issued by the court upon request of the creditor. The debtor shall be arrested by a court-appointed enforcement officer.[106] In order to secure the principle of proportionality, if the debtor refuses to provide the information on his financial circumstances and assets, he may be ordered for an arrest up to six months maximum (§ 802j (1) ZPO).[107]

[101] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3 Aufl. 2016, § 803, Rn. 11, p. 558.

[102] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3 Aufl. 2016, § 802c, Rn. 2, p. 471.

[103] *Dierck/Morvilius/Vollkommer*: Handbuch Zwangsvollstreckungsrecht, 2. Aufl. 2016, Rn. 125, Rn. 126, p. 650.

[104] *Paulus, Christoph G.*: Zivilprozessrecht, 6. Aufl. 2017, p. 292; *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 42, p. 39; Rn. 31, p. 75.

[105] *H. J. Snijders, trans. by Benjamin Ruijsenaars*: Access to Civil Procedure Abroad, 1996, p. 40.

[106] § 802g ZPO.

[107] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 48.22, p. 588.

III. All relevant bodies, both public and private are responsible for disclosing information about the debtors as quickly as possible

1. International requirements on the responsibility of the public and private organs for disclosing information about the debtor

In order to access successfully to information of a debtor's assets, Art. 9 of the GCE requires all relevant bodies, both public and private, shall disclose as quickly as possible to the professionals instructed with enforcement all information that they hold about the domicile, registered office or principal place of business of the debtor, as well as about the elements constituting its assets. These requirements must be provided in the nation laws. These bodies may not withhold information by invoking professional confidentiality. There are several main requirements, accessing to information from the above regulations. With regards to the organs of the state authority or private organizations which have responsibilities for providing information about the debtor's assets, this regulation requires all state bodies, register holders or other sources including public and private sectors should have a duty to provide the required information to the enforcement agent, within an agreed time-limit if such information is compatible with data protection legislation.[108] Co-operation between the variety of the state organs and private institutions, interdepartmental co-operation, as well as cooperation between these departments and enforcement services are always encouraged in order to enable a speedy access to the multiple-source information on the debtor's assets.[109] The next requirement is that the effectiveness of searching and seizing of defendants' assets has to take relevant human rights and data protection provisions into account. The enforcement agents should be allowed to access quickly and efficiently to relevant information contained in registers and other sources, as well as the declaration of a defendant's assets.[110]

In addition, it is recommended that thorough scrutiny of national legislation on personal data protection to adapt to the efficiency of enforcement procedures. In order to keep secret, confidential or sensitive information in the course of enforcement proceedings, enforcement agents must bear in mind that they have responsibility for maintaining confidentiality, otherwise strict sanctions, e.g., disciplinary action, civil sanction and/or criminal sanction should be applied if they make negligent or intentional mistakes.[111] Reuse involved information about the

[108] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.6; *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 43.

[109] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 42.

[110] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.6.

[111] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 44, 45.

assets of the same defendant in subsequent procedures should be accepted as if it should be subject to a clear and precise legal framework.[112] Furthermore, Regulation (EU) No. 655/2014 provides that in order to enforce the preservation order the creditor may obtain information about the bank account of the debtor by sending his request for information to the competent court in the member State. This court must issue the preservation order and transmit it to the authority in the addressee member State who has responsibility for requesting information. Regulation (EU) No. 655/2014 also requires the national law of each member State must provide for methods of obtaining information about the debtor's account as well as disclose to the person responsible for collecting detailed information that they hold.[113]

2. The responsibility of the public and private body for disclosing information about the debtor in Vietnam

In general, under the LECJ, both JC and enforcement organ can access to register holders (e.g., land use right registration offices, secure transaction, secure transaction registration agencies) and other databases, which may contain the assets' information on the JD.[114] There is a fact that in Vietnam it is extremely difficult for the JC to obtain information from registers because most of relevant sources of information are not open to the public, for example databases managed by the authorities or those that have significant safeguards. That is a reason why the enforcement law of Vietnam empowers not only the creditor but also enforcement organs to search records (both private-maintained records and state-maintained records) for information regarding the debtor's assets. With regard to the responsibility of the enforcement agents, under the enforcement law, land use right registration offices, security transaction registration agencies, notary offices and other agencies, organizations and individuals holding information or managing assets and accounts of JDs shall provide information on judgment execution conditions of such JDs; sign written records in case enforcers verify directly or reply in writing within three working days after receiving written requests from enforcers; particularly, the JDs' account information shall be provided without delay.[115] With respect to the right of the JC, the enforcement law regulates that agencies, organizations and individuals holding information or managing assets and accounts of JDs shall provide information upon requests of JCs or their authorized representatives within five working days after receiving such requests, except failure due to force majeure

[112] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 46.

[113] Art. 14.

[114] The LECJ, Art. 7 Para. 1 Sub-para. dd and Art. 44 Para. 4 Sub-para. b and Para. 6 Sub-para. b.

[115] The LECJ, Art. 44 Para. 6 Sub-para. b.

circumstances or objective obstacles. In case of refusal, these agencies, organizations and individuals shall reply in writing, clearly stating the reason.[116]

In cases the debtors remain unable to enforce judgments, information on names, addresses and judgment execution obligations of JDs who lack judgment execution conditions shall be posted up on the websites of the enforcement agency and sent to commune-level people's committees of localities where it is verified for public notification.[117] The decision shall be published for three months.

One of the major problems may occur here is the lack of necessary and adequate provisions in the protection the privacy of the debtor in comparison with the strict requirements of international law on confidentiality of personal information.[118] It is not only a source of information, but rather a mean for pressing the debtor to discharge. However, most of the personal information, e.g., names, specific addresses, enforcement obligations, etc., of the JDs are public on the website where anyone can access.[119] In this respect, the mechanism of providing and protecting the personal data of the JDs under the authority of the central execution court in Germany is valuable experiences for Vietnam (will be analyzed below). In Germany, if the JDs fall into one of the cases prescribed in § 882c (1) ZPO, (e.g., fail to comply with his obligation to provide information on his financial circumstances and assets, or the JCs are not fully satisfied based on the information provided by the JDs or other relevant persons) they shall be entered in the list of JDs (§ 882b ZPO). However, the copying, publishing or information taken from the list must have a purpose consistent with the law and is subject to safeguarding data protection and data security and preventing harassment or undue invasions of the debtor's privacy (§§ 882c, 882f, and 882h ZPO).

Another limitation is that tax records were not clearly regulated by law as a source of information for assessing by the enforcement organs while the tax authorities hold and manage the prime source of information concerning the debtor in general and the debtor's assets. In this regard, in Russia agents' access to banking information is quite efficient owing to cooperation with the tax authorities, which at the agent's request provides information about the financial assets of the debtor.[120] In Germany, the request should be addressed to the Federal Central Tax Office (Bonn). This office can retrieve the account master data in the form of the account number and the

[116] The LECJ, Art. 44 Para. 6 Sub-para. c.

[117] The LECJ, Art. 44a Para. 2, http://thads.moj.gov.vn/noidung/tintuc/Lists/DanhSachTHA/View_Detail.aspx.

[118] *Nguyen, Van Nghia*: Responsibility to Information Provision of the Debtor's Assets in European Countries and in the Federal Republic of Germany, Legis. No. 01/2018, p. 59-64; *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.6.

[119] Website : http://thads.moj.gov.vn/noidung/tintuc/Lists/DanhSachTHA/View_Detail.aspx

[120] *O'Sullivan, Kim/Bradautanu*: Veronica Enforcement of Judgments in SEE, CIS, Georgia and Mongolia, 2016(18)2, p. 219.

information on the authorized person, which results from the reference to §§ 93, 93b AO.[121]

Besides, it is undeniable that the availability of information from private third parties has been considered useful information regarding enforcement. Questioning of those who may have encountered a debtor is a normal part of the work of enforcement agents in many countries and Vietnam is not an exceptional case. However, it is only in relatively limited circumstances that private third parties have an obligation to respond to questioning by an enforcement organ. They must give any relevant information that they possess when they are legally required to do so.[122] According to the LECJ, Vietnam imposes obligations which are more widely framed, in fact, there are numerous related agencies, organizations and individuals relating to providing requested information for the enforcement agents. They are not only the private third parties, but also the public third parties. For example, social insurance, banks and other credit institutions, land use right registration offices, civil servants engaged in justice-civil status, cadastral work-construction-urban centers and the environment, other commune-level cadres and civil servants, and any other agencies, organizations and individuals holding information or managing assets and accounts of the JD shall provide information upon requests of the JC or authorized representatives, fulfill requests of enforcers and take responsibility for the information they provide. If they fail to provide, or provide untruthful information on judgment execution conditions of JDs, they shall be held responsible before law, pay rising expenses and compensation for damage they cause.[123] However, as a matter of practice, it is fairly hard for both enforcers and JCs to require public and private third parties to provide relevant information, which may relate to the location of the debtor or his/her assets. One of the primary causes is that enforcement law often conflicts with other specialized laws. This is a convincing reason why they often make a legitimate excuse for refusing requirements of the enforcers or the creditors. For example, Art. 177 of the LECJ regulates that the social insurance has responsibilities to supply accurate, adequate and timely information and data on the incomes of JDs currently paid through it at the request of enforcers and CJE agencies; to strictly and promptly comply with requests of enforcers for subtraction of incomes of JDs for judgment enforcement; and to fully comply with other requests of enforcers and CJE agencies under this law. Meanwhile, the social insurance agencies abide the law on social insurance. Specifically, under Art. 23 of the 2014 Law on Social Insurance of Vietnam, the social insurance agencies have responsibilities to provide relevant documents and information at the request of competent state agencies (Para. 15); at

[121] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 13, p. 1987.

[122] *Kennett, Wendy*: The Enforcement of Judgments in Europe, 2000, p. 110.

[123] The LECJ, Art. 44 Para. 6, 7.

the same time, the social insurance agencies have also responsibilities to pay pensions and social insurance in a full, convenient, and timely manner (Para. 5). Here, there is a conflict between the enforcement law and the social insurance law and as a result, the social insurance agencies only provide relevant documents and information at the request of the enforcement agencies (state agencies), but they do not comply with the requests of enforcers for subtraction of incomes of JDs for judgment enforcement.[124] These conflicts are clearly inconsistent with the requirements of the international standards for the responsibility to provide information about the debtor's assets which is quick and efficient to access to relevant information contained in registers and other sources.[125]

Another remarkable example is in the case of keeping secret information relating to accounts of the credit institutions' clients under which employees, managers and executives of credit institutions and foreign bank branches may not disclose business secrets of these institutions and branches. Credit institutions and foreign bank branches shall keep secret information relating to accounts, deposits, deposited assets and transactions of their clients. Credit institutions and foreign bank branches may not provide information relating to accounts, deposits, deposited assets and transactions of their clients for other organizations and individuals unless it is so requested by competent state agencies under the law or consented by clients.[126] The banks or the credit institutions often invoke privacy laws or contradictory provisions in order to avoid providing information to the enforcement agents.[127] This entails separate enforcement proceedings, resulting in delays. These conflicts seem to be incompatible with the common international standards, whereby, international law sets out requirements that state agencies, organizations, businesses and related individuals must not cite any reason for confidentiality in business or other reasons to refuse to provide information to agencies or the competent CJE upon request. This provision aims to strengthen the responsibilities of relevant agencies and organizations in the course of judgment execution and ensure respect for judgments, decisions of the court and legal certainty.[128]

Another drawback is the lack of specific regulations on the responsibility of the relevant authorities or sanctions are not strict enough. In addition, the Vietnamese enforcement law is too general and lack of detailed provisions of private third parties

[124] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 87.

[125] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.6.

[126] The 2010 Law on Credit Institutions, Art. 14, which was amended and supplemented 2017.

[127] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 44, p. 257.

[128] *Nguyen, Van Nghia*: Responsibility to Information Provision of the Debtor's Assets in European Countries and in the Federal Republic of Germany, Legis. No. 01/2018, p. 64.

for providing relevant information. For instance, on 4 May 2007, the people's court of TN province declared that the debtor S was responsible for repayment. S has been working at the T University in TN province. On the expiry of the voluntary deadline, S did not enforce the court judgment. Six years later, on 28 March 2013, the CJE department issued a decision coercing S to enforce the judgment by way of monthly salary deduction and demand T University to deduct salary of the debtor S. However, after more than 10 years, until December 2017, T University had not yet implemented the request of the enforcer on the deduction of the debtor S's salary. There still have not yet any transactions applied to T University in order to require the T University abides the enforcer's request because of lacking necessary legal regulations.[129]

Relating to this problem, in some jurisdictions, the enforcement law regulated that anyone who has an economic relationship with the debtor or anyone who owes money to the debtor can be required to provide useful information and must comply with the request of the enforcers.[130] These limitations of the Vietnamese enforcement law have led to the ineffectiveness of the enforcers' decisions, not only as a matter of law, but also upon the existence of any matter of fact.[131]

The declaration of the garnishee in Vietnam, which is a developing country still has major barriers. In the modern economy, garnishment and attachment of earnings are getting more and more popular and complicated, especially the relationship between the first debtor (creditor-debtor) and the third debtor (garnishee, especially banks and employers).[132] In fact, it is true in most jurisdictions that a garnishee is a person or organization who often holds valuable information regarding the debtor, e.g., the balance seized, the real existence of the claim, what value, all accounts and their balances. Under the Vietnamese law, banks and other credit institutions holding information or managing assets and accounts of JDs shall have to provide information on judgment execution conditions for the executors or the enforcement agents. They must supply accurate, adequate and timely information and data on accounts of JDs at the request of enforcers and the enforcement agencies.[133] The Art. 44 Para. 7 of the LECJ states that if they fail to provide or provide untruthful information on judgment execution conditions of JDs, they shall be held responsible before law, pay rising expenses and compensation for damage they cause. The Art.

[129] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 87.

[130] *Kennett, Wendy*: The Enforcement of Judgments in Europe, 2000, p. 111; *Saenger, Ingo*: Zivilprozessordnung, Handkommentar, 7. Aufl. 2017, Rn. 11-12, p. 1990.

[131] *Nguyen, Thanh Thuy*: Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 101.

[132] *Kerameus, Konstantinos D.*: Enforcement in the International Context, 1997, p. 75.

[133] The LECJ, Art. 176 Para. 1.

44 Para. 8 of this law also provides that the government shall detail this Article. Unfortunately, Decree No. 62/2015/ND-CP is a document detailing the LECJ did not set up any detailed provisions in order to guide and explain this article. As a result, it is getting more and more difficult in applying sanctions to garnishee if they issue any failed declaration. Furthermore, enforcement law of Vietnam did not require employers disclosing relevant information about the incomes, remunerations, and wages of the debtor at the beginning of the enforcement proceedings. However, employers only have an obligation to provide information in the context of a seizure of earnings and more generally garnishees have certain obligations to provide information when their debt is garnished. For example, employers where JDs receive their salary, remunerations, pensions, allowances and other lawful incomes shall subtract from the incomes of JDs upon requests of enforcers.[134]

Last but not least, under the Vietnamese enforcement law, enforcers have tasks and powers in requesting concerned agencies, organizations, and individual supply documents for the verification of addresses and assets of JDs.[135] This means that for the purpose of obtaining relevant information about the debtor, enforcers or enforcement agencies can request the police to disclose information on the addresses of the debtors. However, lack of elaborate provisions concerning the cooperation between the enforcement agent and the police in providing information about the debtors, which has led an enormous obstacle in the enforcement activities, especially in the protection the rights and benefits of the creditors.[136] Meanwhile an address of a debtor is a valuable information relating to many important procedures in the enforcement process, e.g., the notification of judgment enforcement; or in case an address or a place of residence of a JD cannot be identified, heads of CJE agencies shall issue decisions on lacking of judgment execution conditions; or in case, JDs' addresses have not yet been identified, heads of CJE agencies shall issue decisions to postpone judgment enforcement.[137]

For legal persons, an official address must be recorded on the appropriate register. Vietnam has national enterprise registration database and national business registration information system, in which national enterprise registration database means a collection of data about business registration nationwide, and national business registration information system comprises the national enterprise registration database, national business registration portal, and the system

[134] The LECJ, Art. 78.

[135] Art. 20 Para. 4.

[136] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 92-93.

[137] The LECJ, Art. 40 Para. 3, Art. 42, Art. 44a Para. 1 Sub-para. c and Art. 48 Para. 1 Sub-para. b.

infrastructure.[138] The national enterprise registration database contains the address of the organization's headquarter or address of the individual's permanent residence, workplace, or another location that is registered by such person with the enterprise as a contact. The business registration authority has the duties and entitlements to provide information for regulatory bodies, organizations and individuals at their request as prescribed by law.[139] It is worth noting that there is a close relationship between the enforcement agent, the police and the business registration authority in providing and receiving information but unfortunately it was not legally detail prescribed in the LECJ. Therefore, the civil enforcement activity must face with several obstacles to achieving closer liaison between concerned agencies.

The responsibility of the public and private body for disclosing information about the debtor in Germany is a successful practice for Vietnam. Under certain circumstances, § 802l (1) ZPO regulates that if it is foreseeable that the enforcement against the assets listed therein will not achieve the full satisfaction of the creditor, the bailiff may obtain information about the debtor's assets from the statutory pension insurance funds, the Federal Central Tax Office or the Federal Motor Transport Authority.[140] From the statutory pension insurance funds, the bailiff can obtain the name, the first names, or the company name of the debtor, as well as the addresses of the current employers whom the debtor is working for under an employment relationship entailing the obligation to make compulsory social insurance contributions. Under the circumstances, the enforcement officer can retrieve certain data from the Central Tax Office concerning credit institutions to which the creditor is a client.[141] This information can be used by the creditor in order to seize the account. According to § 802l (1) S. 1 ZPO, data that has been received by the bailiff within the last three months may also be forwarded to another creditor if the conditions for collecting the data are also suitable with this creditor. The bailiff must notify to the other creditor of the fact that the data was collected in a different procedure and inform him of the time of receipt. New information must be collected at the request of the other JC if there are any indications that after receiving the information, the financial situation of the JD has changed in accordance with § 802l (1) S. 1 ZPO.[142] § 802l ZPO also defines clearly in terms of person who allows to retrieve the data as well as the purpose of using this data. This provision meets the requirements of German data protection law.[143] For example, if there is a fundamental conflict of interest existing in the enforcement law relating to the

[138] The 2014 Law on Enterprises, Art. 4 Para. 6, 14.

[139] The 2014 Law on Enterprises, Art. 209 Para. 1 Sub-para. b.

[140] § 802l ZPO was amended on 21.11.2016, came into force from 26.11.2016.

[141] § 93b (1) AO and § 24c (1) KWG.

[142] § 802l (4) ZPO was amended on 21.11.2016, came into force from 26.11.2016.

[143] *Wagner*: Kommentar zur ZPO, § 802l, 6 et seq. ZPO.

benefit of the debtor, the balance between the transparency of the debtor's assets on the one hand and scrupulous protection of the rights of the JDs on the other hand should be concerned.[144] Under § 93b (1) AO, the Federal Central Tax Authority has responsibility for providing these data to the enforcement officer. In turn, according to § 24c (1) KWG, credit institutions are under a general obligation to provide these data to the Federal Central Tax Authority. Especially the personal information of the account holder and possibly the person with a right of disposal, the number of accounts or depots, the date of setting account and if necessary, the date of closing accounts.[145] In Germany, there is no statutory "bank secrecy" and pre-emptive statutory obligations. Consequently, confidentiality is not an excuse for refusing to provide information about the debtor's assets. This is one of the best and rewarding experiences for Vietnam, especially in the field of credit and banking law, which is one of the most ineffective judgment execution areas in Vietnam.[146]

§ 802l ZPO regulates that obtaining or requesting information and data shall be permissible only insofar as this is required for enforcement purposes. According to the first paragraph second sentence of this article, after this amendment comes into effect until 25 November 2016, the procedure presupposes an enforceable right of at least € 500, whereby costs and associated claims are only taken into account if they are the sole subject of the enforcement order (calculation see Rn. 8). The decision for the application of the new regulation is the time of the court decision on the request for information.[147] One of the basic principles of enforcement is that the recovery of monetary claims is effected promptly, fully, and in a cost-efficient manner.[148] By reason of the corresponding enforcement instructions and the physical handover of the enforceable execution copy, notwithstanding any further competences, the bailiff may have the powers to obtain information from the debtor on his financial circumstances and the assets he owns (§ 802c ZPO); to obtain information from third parties on the debtor's financial circumstances and the assets he owns (§ 802l).[149] According to § 802a (2) S. 1 No. 2 and 3, a specific motion to obtain information is not required.[150]

§§ 802k and 802f (6) address the role of the central execution courts in safeguarding personal data protection and data security of the JD. After the list of assets has been provided by the JD (§§ 802c, d ZPO), the bailiff shall deposit it at the central execution court which is responsible for the execution (§ 802k (1) ZPO) and

[144] *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 4, p. 6.

[145] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, Rn. 9, p. 780.

[146] See A. Chapter 1. II. 2.

[147] *Musielak/Voit/Voit*: 16. Aufl. 2019, § 802l ZPO, Rn. 7.

[148] § 802a (1) ZPO.

[149] § 802a (2) ZPO.

[150] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, Rn. 2, p. 778.

shall forward a hard-copy printout to the creditor without undue delay (§ 802f (6)). The central execution court is established in each state based on a provision of federal or state (land) law.[151] Any other bailiff may demand copies of the list of assets which are deposited at the central execution courts for purposes of execution (§ 802k (2) ZPO). However, not only bailiffs are entitled to demand the lists of assets *("Vermögensverzeichnis")*, any other execution authority which is described by § 802k (2) ZPO has the right to demand a copy. In addition, the list of assets can be inspected by the courts responsible for execution, insolvency courts, courts maintaining registers, as well as the law enforcement agencies for the purpose of carrying out the task's incumbent on them (§ 802k (2) ZPO).[152] The insolvency courts have a direct right to inspect the list of assets, if they have to examine the JD's estate as a part of the insolvency proceedings and the debtor does not comply with his/her duty to submit a list of assets in accordance with the § 20 InsO. Under § 20 (1) InsO if the request to open insolvency proceedings is admissible, the debtor shall disclose to the insolvency court such information as is necessary for a decision on the request, and otherwise to support the court in the fulfillment of his duties. For courts maintaining registers, the inspection of the list of assets is required in the case of dissolution of companies and cooperatives without assets in accordance with § 394 of the Act on Proceedings in Family matters and in matters of non-contentious jurisdiction ("FamFG"). Law enforcement authorities may need to know the content of the assets' information to prosecute the criminal offenses. This is particularly true in the prosecution of fraud and insolvency offenses, money laundering offenses, false insurances by way of written oath and breach of maintenance obligations.[153]

The central execution court may have other agencies perform the data processing on its behalf or protect the personal data when lodging or retrieving the information about the assets of the JD in the list of assets. The central execution courts have to fulfil their tasks relating to processing and protecting the personal data as is provided by a statutory instrument. This statutory instrument demands that the list of assets is protected against unauthorized assess by a third parties while being transmitted to the central execution court or to the other agencies. The statutory instrument further demands that has to be guaranteed that the lists are disclosed as a whole and completely, that they can be traced back to its origin; and that they are only disclosed to registered users, with every disclosure being recorded.[154] The central execution court model that holds, protects and provides information about the assets of the JD

[151] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 802k, Rn. 3, 4, p. 535.

[152] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, Rn. 5-7, p. 771.

[153] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 802k, Rn. 8, p. 771.

[154] § 802k (4) ZPO.

in the Federal Republic of Germany is a new and precious experience for Vietnam now and then.

IV. Enforceable titles should be clearly and comprehensively defined, including the conditions of its enforceability

1. International requirements on the enforceable titles

According to the GCE "title" defined by national law that allows the forced recovery of the debt by implementing legal measures of enforcement. All court decisions with the power of enforceability as well as those documents to which the law grants the power of enforceability authentic instruments, arbitral decisions, and judicial transactions are regarded as enforceable titles.[155]

Recommendation Rec (2003)17 of 9 September 2003 states that enforcement procedures should prescribe an exhaustive definition and listing of enforceable titles and how they become effective.[156] To the extent that enforcement procedure should consider all elements or aspects of enforcement, providing all types of enforceable titles as well as explaining how the enforcement titles carry out effectively. In addition, the national legislative framework should contain a clear definition of what is considered as an enforceable title and the conditions of its enforceability. Enforcement titles should be drafted in a clear and comprehensible way, leaving no opportunity for misinterpretation.[157]

Regarding judicial cooperation in civil matters, Art. 81 of the Treaty on the Functioning of EU considers the possibility of enforcing the enforcement title in a different member States. For example, for the purposes of developing judicial cooperation in civil matters, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: the mutual recognition and enforcement between the member States of judgments and of decisions in extrajudicial cases; the cross-border service of judicial and extrajudicial documents; the compatibility of the rules applicable in the member States concerning conflict of laws and of jurisdiction; effective access to justice; etc.[158] This article is not only applicable to court decisions, but also governs the recognition and enforcement of "judicial transactions" and "authentic instruments".[159] Under the Brussels Ibis Regulation, 'judgment' means any judgment

[155] The GCE, Art. 3.

[156] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.b.

[157] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 23, 24.

[158] The Treaty on the Functioning of EU, Art. 81 Para. 2 Sub-para. a, b, c, e.

[159] The GCE, p. 144, 145.

given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.[160] Meanwhile, Regulation (EC) No. 805/2004 considers enforcement titles to be certified as a European Enforcement Order. This regulation shall not only apply to judgments, court settlements and authentic instruments on uncontested claims, but also apply to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders.[161] According to the Art. 4 Para. 1 Regulation (EC) No. 805/2004, "judgment" means any judgment given by a court or tribunal of a member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court. This definition is much the same as the concept of "judgment" stipulated in the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Art. 32).[162] Authentic instrument including: (1) A document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which relates to the signature and the content of the instrument; and has been established by a public authority or other authority, empowered for that purpose by the Member State in which it originates; (2) An arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them.[163]

Besides, the Uniform Act also specifies that writs of execution (enforceable titles) constituting: (1) Court decisions bearing an executory clause and decisions enforceable immediately; (2) Foreign writs and decisions as well as arbitration awards declared enforceable by a court decision not liable to any remedy at law suspending execution, of the State in which the writ is invoked; (3) Conciliation reports signed by the judge and the parties; (4) Notarial deeds bearing an executory clause; (5) Decisions to which the national law of each Contracting State recognizes as a court decision.

Thus, international law has defined two central concepts in the field of execution, that are "enforceable title" and "judgment". What is included in the "enforceable titles" and "judgments" concepts which are also fully listed. At the same time, international standards also set requirements for national legislation to ensure effective enforcement. Accordingly, the global standard also sets out the requirements for the effective implementation of "enforceable title", including all types of enforceable titles must be listed in the national law; how the enforcement

[160] *The European Parliament and the Council of the EU*: The Brussels Ibis Regulation, Art. 2 Para. a.

[161] Art. 3 Para. 1, 2.

[162] Referred to as the 2007 Lugano Convention.

[163] Regulation (EC) No. 805/2004, Art. 4 Para. 1.

titles enforce effectively; clear definition of what is considered as an enforceable title; and the conditions of its enforceability.

2. Vietnamese enforcement law on the enforceable titles

a) Regulations of the enforcement laws and other Vietnamese relevant laws on the enforcement titles

Currently, there are three main areas of judgment enforcement, including criminal judgment execution, civil judgment enforcement, and administrative enforcement.[164] Besides, there are also execution of imprisonment sentences, i.e., the execution of suspended sentences; the execution of non-custodial reform penalty; probation, and residence ban as a penalty applied by a court.[165] However, the execution of criminal or administrative judgments as well as imprisonment sentences are not related to property and not subject to the executors' responsibility shall not be covered by the research scope of this topic.

Judgments, decisions or part of criminal and administrative judgments and decisions on the property shall be enforced according to the provisions of the civil judgment execution law.[166] Specifically, civil judgment execution comprising civil judgments and decisions, and some other decisions in criminal matters, e.g., the imposition of fines, confiscation of assets, retrospective collection of illicitly earned money and assets, handling of material evidence and assets, etc.[167] The research content of this thesis only focuses on analyzing issues related to the ECJs.

According to the Vietnamese law, judgments and rulings/decisions to be enforced enshrining in different laws and codes.[168] First and foremost, the CJE procedures are regulated by the LECJ; Part 9th Chapter XXXIX of the CPC 2015 on enforcing civil judgments/decisions of the courts; Art. 311 Para. 1 Sub-para. h of the 2015 Law on Administrative Procedures of Vietnam; and Art. 262 Para. 1 Sub-para. 3, Art. 445 Para. 1 of the 2015 Criminal Procedure Code of Vietnam.[169] Besides, the CJE

[164] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, 18-19.

[165] Decree No. 60/2000/ND-CP, Decree No. 61/2000/ND-CP, and the 2006 Vietnamese Law on Residence, Art. 10 Para. 2.

[166] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, 18-19.

[167] *Nguyen, Van Nghia*: Execution of Suspended Sentence but Probation with the Demand of Judicial Renovation, Democracy and Law Journal, Vol. 12/2006, p. 34-39, and see Part aa) below.

[168] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments in Vietnam, 2018, p. 17-18.

[169] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments in Vietnam, 2018, p. 17-21.

procedures are also regulated in other laws or decrees of the Vietnamese Government, as follow:[170]

aa) According to the LECJ, judgments and rulings to be enforced, including judgments and rulings having taken legal effect and the judgments and rulings of first-instance courts shall be enforced immediately though they may be appealed or protested.[171] The judgments and rulings having taken legal effect, e.g., civil judgments and decisions, fines, confiscation of assets, retrospective collection of illicitly earned money and assets, handling of material evidence and assets, court fees and civil decisions involved in criminal judgments and decisions, property parts of administrative judgments and decisions of courts, bankruptcy settlement decisions of courts, etc. The following judgments and rulings of first-instance courts shall be enforced immediately though they may be appealed or protested against, including: judgments and rulings on alimony, salary or wage payment, severance allowance, job-loss allowance, working capacity loss allowance or compensation for loss of life or damage to health or mental harm, or reemployment of dismissing employees; rulings on the application of provisional urgent measures.

bb) According to the CPC 2015, judgments/decisions of the courts are enforced, including judgments and rulings having taken legal effect and the following judgments/decisions of first-instance courts shall be immediately enforced though they may be appealed against or complained/recommended.[172] The judgments and rulings having taken legal effect, e.g., judgments/decisions or parts of judgments/decisions of the first-instance courts, which are not appealed against according to the appellate procedures; judgments/decisions of appellate Courts; etc. The following judgments/decisions of first-instance Courts shall be immediately enforced though they may be appealed against or complained/recommended about, e.g., judgments/decisions on alimonies, remuneration, reinstatement of employees, wages, severance pays, compensation for loss of capacity for work, etc., and decisions on application of provisional emergency measures.

cc) According to the 2015 Law on Administrative Procedures of Vietnam, rulings on assets in the court judgment or ruling shall be executed in accordance with the law on execution of civil judgments.[173]

dd) According to the 2015 Criminal Procedure Code of Vietnam, the first-instance court, in 10 days upon pronouncing a judgment, shall deliver its judgments to a competent authority enforcing civil judgments if such judgments express pecuniary

[170] *Nguyen, Van Nghia*: Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 36-40.

[171] Art. 2.

[172] Art. 482.

[173] Art. 311 Para. 1 Sub-para. h.

fine, confiscation of property and civil rulings according to the law on civil sentence enforcement.[174] An appellate Court, in 10 days upon pronouncing a judgment or issuing a ruling, must deliver such appellate judgment or rulings to the competent authority enforcing civil judgments in cases the appellate judgment expressing pecuniary fines, confiscation of property and civil rulings. If the higher people's court hears the appeals, the time limit stated above may be extended for 25 more days at most.[175]

ee) Other Vietnamese laws, including Vietnamese codes or decrees of the Vietnamese Government may contain the enforceable titles, e.g., the Civil Code 2015, law regulations on secured transactions or competition law of 2018.[176] The implementation of the enforcement of settlement decisions is stipulated in the Art. 114 of the 2018 Competition Law as follows:

"1. Within 15 days from the effective date of a settlement decision, if the party obliged to comply with the decision fails to voluntarily do so, the President of the national competition commission and the successful party shall have the right to request the competent authorities to enforce the settlement decision. 2. If a settlement decision is related to the properties of the party bound to comply with such decision, the national competition Commission shall request the competent civil enforcement agency to carry out the enforcement".

Needless to say, that there are two serious limitations on regulations concerning enforceable titles in Vietnam. Firstly, the LECJ has not covered all court decisions and judgments in comparison with other legal regulations.[177] For example, according to the Art. 2 Para. 2 of the LECJ, the following judgments, and rulings of first-instance courts shall be enforced immediately though they may be appealed or protested against including judgments and rulings on alimony, salary or wage payment, severance allowance, job-loss allowance, working capacity loss allowance or compensation for loss of life or damage to health or mental harm, or reemployment of dismissing employees and rulings on application of provisional urgent measures. Meanwhile, the scope of the judgments or decisions to be enforced under the provisions of the CPC 2015 is broader than that under the provisions of the LECJ. Specifically, Art. 482 Para. 2 of the CPC 2015 regulated that the following judgments/decisions of first-instance Courts shall be immediately enforced though they may be appealed against or complained/recommended about, including

[174] Art. 262 Para. 1 Sub-para. 3.

[175] Art. 262 Para. 2.

[176] This Law was issued on 12 June 2018, came into force as of 1 July 2019.

[177] *Nguyen, Van Nghia*: Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 37; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, 19-22.

judgments/decisions on alimonies, remuneration, reinstatement of employees, wages, severance pays, compensation for the loss of capacity for work, redundancy, *social insurance, unemployment insurance, health insurance* or compensations for loss of lives, health or mental damage suffered by citizens; *decisions on the lawfulness of labor strikes* and decisions on application of provisional emergency measures.

The obvious difference between the above two laws is that there are four types of judgments or decisions encompassing social insurance, unemployment insurance, health insurance and decisions on the lawfulness of labor strikes specified in the CPC 2015, but unfortunately, they were not included in the LECJ. Meanwhile Art. 17 Para. 1 of the LECJ regulates that enforcers are persons tasked by the State to enforce judgments and rulings prescribed in Art. 2 of this Law (this law means the LECJ, is not the CPC 2015). These situations may lead to incompetent enforcers at enforcing some types of judgments or decisions.[178] Inconsistency between the provisions of the different laws has caused a lot of difficulties and embarrassing for executors and enforcement agencies in the course of enforcement of judgments in practice.[179] Contrary to the legal system of Vietnam, Germany has a robust legal framework with its relatively clear and succinct rules ensuring certainty, foreseeability and transparency for both the creditor and the debtor. Whereby, the enforcement of monetary claims and non-monetary claims are provided in the clearly elaborate legal framework of Germany, e.g., ZPO, AO, VwGO, SGG, LVwVG Baden-Württemberg, ZVG, etc.[180] Under the evaluation and ranking of the World Justice Project Rule of Law Index 2019, relating to the rule of law development, Germany ranks 6th out of 126 countries, meanwhile Vietnam ranks 81st out of 126 countries wordwide.[181]

Another example related to the scope of the cassation judgment is enforced. Art. 3 of the LECJ makes a list of enforcing of cassation rulings, including enforcement of cassation rulings upholding legally effective judgments or rulings (Art. 134), enforcement of cassation rulings upholding lower-lever courts' lawful judgments or rulings which have been quashed or modified (Art. 135) and enforcement of cassation rulings quashing legally effective judgments or rulings (Art. 136). At the

[178] *Nguyen, Van Nghia*: Provisions of the Law on Civil Judgment Execution on executed Judgment and Decision-The real Situation and some Recommendations, Democracy and Law Journal, Vol. 11 (308)/2017, p. 54; *Nguyen, Van Nghia*: Legal Provisions on Judgments, Decisions are enforced and Relevant International Experience, the electronic Portal of the Ministry of Justice, Vietnam, https://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2215, 2017.

[179] *Nguyen, Van Nghia*: Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8/2018, p. 37; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, p. 20.

[180] *Kern, Christoph A.*: National Report for Germany, Part I, p. 10-11.

[181] *The World Justice Project's research team*: World Justice Project Rule of Law Index 2019, p. 16-17.

same time, Art. 343 of the CPC 2015 regulates that the cassation Review Panels shall have the following powers: (1) to reject the appeals and uphold the court's legally effective judgments/decisions; (2) to repeal the legally effective judgments/decisions of courts and uphold the lawful judgments/decisions of the subordinate courts, which have been annulled or amended; (3) to repeal parts or the whole of courts' legally effective judgments/decisions to retry according to first-instance procedures or appellate procedures; (4) to repeal legally effective judgments/decisions and terminate the resolution of the cases; (5) to modify parts or the whole of the legally effective judgments/decisions.

In comparison to the LECJ, the CPC 2015 provides more than two cases of cassations, including (3) and (5), which has not been specified on the enforcement procedures in the LECJ.[182] Apparently, it is very difficult for the enforcers as well as enforcement agencies when they must enforce in the cases of repealing parts or the whole of courts' legally effective judgments/decisions to retry according to first-instance procedures or appellate procedures; and modifying parts or the whole of the legally effective judgments/decisions.[183] The reason for this is the lack of regulations on repealing or modifying parts or the whole of courts' legally effective judgments/decisions in the LECJ. The lack of consistency between the enforcement law and other laws about the judgments and rulings to be enforced has caused many difficulties for the executors in practice.[184] The study proposes to expand the scope of judgments and decisions enforced in accordance with the enforcement law that has been suggested since 2006.[185] However, so far, after more than 13 years, the shortcomings related to the scope of judgments and decisions to be enforced still repeated.

In addition, the scope of court judgments and rulings enforced as mentioned earlier is the important legal grounds for the enforcement agency to enforce the judgments, e.g., the right to request the execution of judgment, the right to lodge an appeal, the right to make the denunciation, etc. However, in comparison to the enforcement law in other countries, the scope of enforcement of the above mentioned judgments in Vietnam is much narrower, e.g., enforcers not only enforce the judgments and

[182] *Nguyen, Van Nghia*: Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 37.

[183] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, p. 19-20.

[184] *Nguyen, Van Nghia*: Provisions of the Law on Civil Judgment Execution on executed Judgment and Decision - The real Situation and some Recommendations, Democracy and Law Journal, Vol. 11 (308)/2017, p. 53-54; *Nguyen, Van Nghia*: Legal Provisions on Judgments, Decisions are enforced and Relevant International Experience, the Electronic Portal of the Ministry of Justice, Vietnam, https://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2215, 2017; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, p. 19-20.

[185] *Nguyen, Van Nghia*, Ensuring Human Right in Judgment Execution, Democracy and Law Journal, 2006, p. 193.

decisions of the courts and the arbitration, but also enforce the decisions of the administrative organs and a voucher with the value of the payment, the agreement between the parties, etc.[186] In fact, in Vietnam there are cases of which the settlements are done outside the courtroom, therefore when such decisions are legally recognized they should be enforceable as that of court decisions. For examples, Art. 416 of the CPC 2015 regulates that

"The Court shall consider issuing the decision to recognize the result of an out-of-Court mediation in a dispute between agencies, organizations and individuals that is conducted by a competent agency, organization or individual, according to law regulations on mediation to be a successful mediation result".

And Para. 8, Para. 9 of the Art. 419 of this Code also stipulates:

"The decision to recognize or to not recognize a successful out-of-Court mediation result shall immediately take effect and shall not be appealed against according to appellate procedures. The decision to recognize or to not recognize the successful out-of-Court mediation result shall be enforced according to law regulations on ECJs".

However, because the LECJ was enacted in 2014, while the civil procedure code was enacted later in 2015 or the competition law was issued in 2018, therefore the LECJ had not included any specific regulations on the enforcement procedures of the decision to recognize or to not recognize the successful out-of-court mediation results.[187]

Moreover, Vietnamese law lacks the measures to ensure the execution of judgments and decisions of the courts and lack conditions of its enforceability. For example, the CPC 2015 does not provide that the involved parties pretrial must pay a sum of money to ensure the ECJs. Art. 146 Para. 2 S. 1 of the CPC 2015 only regulates persons who have submitted applications petitioning Courts to settle civil matters must advance charges for the resolution of such civil matters, except for cases where they are exempt from, or do not have to discharge the charges advances. One more example is that the enforcement agencies must not participate in the process of investigating and verifying the involved parties' property and in the course of the court's trial, so that after the judgments and/or decisions of the courts

[186] *Nguyen, Thanh Thuy*: Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 38.

[187] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*, Commentary on Civil Judgment Enforcement Law, 2019, Art. 6, p. 58-59; *Nguyen, Van Nghia*, Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 39.

are rendered, executors and the JCs must face with a great deal of stumbling block in verifying the JDs.[188]

Another inadequacy of the LECJ is that this law did not contain the regulations on enforcement regarding off-plan property while other substantive laws have. As a result, enforcers or enforcement agencies are often reluctant to enforce the judgments/decisions when they received such judgments/decisions.[189] Art. 1 Para. 4 of the Decree No. 11/2012/ND-CP of 22 February 2012 on amendments and supplements to a number of articles of the Government's Decree No. 163/2006/ND-CP of 29 December 2006 on secured transactions regulated that in case a future asset is handled to secure the performance of a civil obligation, right after obtaining results, competent state agencies shall base on these results to carry out procedures to transfer the right to own or use asset to the asset buyer or recipient. Under the Vietnamese enforcement law, there are six measures to coerce judgment enforcement, including: (1) deduction of money on accounts; recovery and handling of money and valuable papers of JDs; (2) subtraction of incomes of JDs; (3) distraint and handling of assets of JDs, including also those held by third parties; (4) exploitation of assets of JDs; (5) forcible transfer of objects, property rights and papers; and (6) forcible performance or non-performance of certain jobs by JDs.

Among above measures to coerce judgment enforcement, the third enforcement measure is especially noticeable, however, this enforcement method solely on assets of JDs or those held by third parties. These assets to some extent did not include the property will be formed in the future (off-plan property). In addition, the enforcement law of Vietnam has not yet mentioned to distraining or handling of off-plan property, including non-formed property or formed property that entity has established his/her ownership rights after the time of transaction establishment. Meanwhile, off-plan property has been included in the Civil Code 2015, e.g., Art. 105, Art. 108, Art. 293, Art. 294, Art. 295 and Art. 336. As a result, the enforcement work has been facing with huge challenges because the enforcement law lacks necessary regulations on the handling of off-plan property.[190] Below are two striking examples occurring recently in the course of enforcement proceedings in Vietnam:

[188] *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 186-187.

[189] *Nguyen, Van Nghia*, Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 37-38.

[190] *Nguyen, Van Nghia*: Provisions of the Law on Civil Judgment Execution on executed Judgment and Decision-The real Situation and some Recommendations, Democracy and Law Journal, Vol. 11 (308)/2017, p. 56; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, p. 20.

The first example:[191] Decision No. 51/2014/KDTM-ST dated 15 September 2014 recognizing the agreement of two parties, which are Joint Stock Company D and Joint Stock commercial Bank C. "Joint Stock Company D must pay for Joint Stock Commercial Bank C with the amount of VND 160,302,133,153 (and interest payment delinquency under the bond purchase order No. 031-11/DMTP-PGDBT dated 23 April 2011 and the bond ordering No. 076-11/DMTP-PGDBT dated 18 November 2011 was signed between Joint Stock Commercial Bank C and Joint Stock Company D, including the principal debt of VND 100 billion, the interest until on 03 September 2014 is VND 60,302,133,153. The expiry of the deadline for paying the above payment is 15 September 2014.

By the above deadline, if Joint Stock Company D fails to repay the debt, the Joint Stock Commercial Bank C will have the right to request the CJE body to issue 70% of the value of the Apartment and Office Building Project which are the off-plan property at 11D Thi Sach".

However, when the civil judgment executing agency has verified, it was known that the Apartment and Office Building Project at 11D Thi Sach had not yet been built. As a result, the competent enforcement agency could not have enforced the judgment in accordance with the content of the decision of the court.

The second example:[192] In 2010, Commercial Bank C provided 50 billion VND for Joint Stock Company D with the mortgaged properties are the right to use land and construction works on the land formed from loan funds of the Commercial Bank C belonging to Motels, Villas and golf courses Project. By 13 May 2014, the competent Court rendered a decision recognizing the agreement between the defendant Joint Stock Company D and the plaintiff Commercial Bank C on the repayment of debt, but Joint Stock Company D had not yet proceeded to build any assets on the land so far. As a result, until 2017, this case was not enforced.[193]

In addition, it is taken for granted that within the domestic legal system, there is a big gap between the enforcement law and other relevant laws with the policy and the constitutional laws about the enforceable titles. Firstly, Resolution No. 49-NQ/TW issued by the Politburo of the CPV on the judicial reform strategy to 2020 insisted that “Introducing a mechanism to ensure that every legally binding court judgment must be enforced”.[194] In addition, the Constitution of Vietnam regulates that the

[191] *Nguyen, Van Nghia*, Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 38-39.

[192] *Nguyen, Van Nghia*: Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 39.

[193] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 2, p. 22.

[194] Section II. 2.1.

judgments and decisions of the people's courts, which have taken legal effect must be respected by agencies, organizations, and individuals and must be strictly observed by the concerned agencies, organizations or individuals.[195] However, many newly enacted laws cannot be implemented effectively because there are major conflicts, overlaps as well as inconsistences between these new regulations with the enforcement law and it can be called "*policy from the top, game playing in the bottom"*.[196]

b) Regulations of Vietnamese laws and international laws on the enforceable titles

In Vietnam, the enforced judgments and rulings of courts, as well as awards and decisions of commercial arbitrations, are defined in the LECJ and other relevant laws. However, the scope of enforced judgments and rulings in the LECJ is still inconsistent with other laws. In addition, some new laws and codes have recently passed regulating some new legal concepts while the LECJ has not been amended and supplemented timely. As a result, the civil judgment enforcement agencies are facing with considerable difficulties and confusions when they have to enforce judgments and decisions that the provisions of relevant laws are lacking, contradictory, or overlapping.[197]

In addition, according to the above analysis, the LECJ as well as the CPC 2015 and other relevant laws only regulate the objects to be executed in accordance with the civil judgment execution procedures are mainly the judgment, decision of the court; bankruptcy settlement decisions of courts; settlement decisions of the President of national competition commission, the anti-competitive settlement council, decisions on handling of complaints against settlement decisions of the President of national competition commission, the anti-competitive complaint handling council and awards and decisions of commercial arbitration.[198] Under the provisions of the LECJ, so far, the authentic instruments or judicial transactions have not been considered as enforceable titles and have not been enforced according to civil judgment enforcement procedures.[199]

Therefore, the scope of the object to be executed under the Vietnamese laws is narrower than the general international standards, especially in comparison to the European standards (Art. 3 of the GCE). Furthermore, many types of new judgments, decisions or documents (e.g., a decision to settle a non-court settlement, a small-

[195] Art. 106.

[196] *Qing-Yun Jiang*: Court Delay and Law Enforcement in China, 2006, p. 16.

[197] *Nguyen, Van Nghia*: Improvements of Legal Provisions on Determination of Judgments and Decisions for Enforcement according to Civil Court Execution Procedures, Legis. No. 8(360), T4/2018, p. 37.

[198] This content was amended by the 2018 Competition Law which comes into force from 01 July 2019.

[199] *Nguyen, Van Nghia*: Provisions of the Law on Civil Judgment Execution on executed Judgment and Decision-The real Situation and some Recommendations, Democracy and Law Journal, Vol. 11 (308)/2017, p. 53-58.

value dispute) have been referenced from specialized laws to the civil judgment enforcement law and enforced according to the civil judgment enforcement procedures. However, the civil judgment enforcement law has not yet specified the procedures for implementing these types of judgments and decisions. Thus, clearly that compare with the objectives of the judicial reform strategy and the international standards, the Vietnamese civil judgment enforcement law has not yet fully and clearly defined the mechanism to ensure the enforcement of all court decisions. These differences in the scope of implementation and the requirement of enforceable titles may be significant obstacles to the enforcement work, especially the implementation of two important agreements (FTA and IPA) which were signed between Vietnam and Europe on 30 June 2019.

In addition to international standards, the full, rigorous, feasible rules of enforceable titles of the Federal Republic of Germany below may be valuable experiences for Vietnam. In Germany, the first and foremost requirement of the enforcement is an enforceable title. In practice, important titles are final or at least provisionally enforceable judgments (§§ 705 et seq. ZPO).[200] A title of enforcement is a public document stating that the claim to be realized is enforceable. The enforcement title is a public document which, together with the enforcement clause (§ 725 ZPO) attached to it, announces the enforceability of the claim. It embodies the subjective right of execution and thus forms the basis for the execution (§ 724 (1) ZPO), namely the right of the creditor against the state to carry out acts of execution, the creditor's power over the debtor to enforce it, and finally the right of the executing authorities to execute enforcement measures against the debtor.[201]

The most principal enforcement title is the final judgment of the ordinary courts that orders the debtor to carry out a performance (more enforcement titles are listed in § 794 ZPO).[202] § 300 (1) ZPO defines the final judgment. Once the legal dispute is ready for the final decision to be taken, the court is to deliver this decision by a final judgment. A final judgment is also the partial judgment (§ 301 ZPO) and even a provisional judgment according to § 302 (3) or § 599 (3) is as enforceable as a final judgment.[203] Provisional enforceability (*vorläufige Vollstreckbarkeit*) means that the judgment is subject to enforcement even before it becomes res judicata. However, it can only be done if the plaintiff meets the guaranteed conditions set out in § 709 ZPO and must compensate the defendant for the damage caused by the enforcement

[200] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 496.

[201] *Lüke, Gerhard/Hau, Wolfgang*: Zwangsvollstreckungsrecht, 3. Aufl. 2008, p. 25.

[202] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 13.1, 14.1.

[203] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 704 Rn. 1. p. 30; BGHZ 69, 270; BGH, NJW 1967, 566.

(§ 717 (2) ZPO).[204] Furthermore, default judgments as set out in § 330 and § 331 are enforceable as well as the judgment based on the defendant's acknowledgment of the claim (§ 307).[205] Beside the final judgments emanating from a civil procedure according to the Code, also the final judgments of the labor courts are final judgments in terms of § 704 ZPO (arg e § 62 ArbGG).

§ 704 ZPO regulates that compulsory enforcement may be pursued based on final judgments that have become final and binding, or that have been declared provisionally enforceable. In principle, only final judgments against which no appeal is possible may be enforced. Judgments which are subject to appeal can be temporarily enforceable, e.g., in the case the enforcement creditor provides surety to secure the opposite party.

Naturally, enforcement is only possible insofar as the contents of the judgment are of a nature that can be enforced. Judgments can be enforced, including the decision on the costs, if the judgment orders a performance, or the non-performance of certain acts *(Leistungsurteil)*. Decisions or judgments comprising a declaratory judgment *(Feststellungsurteil)* or a judgment that establishes or alters a legal relationship *(Gestaltungsurteil)* cannot be enforced.[206]

In German law, there is no single list of enforceable titles. However, German Law determines clearly the courts' decisions and other documents which are enforceable together with other enforceable titles declared enforceable by EU Regulations.[207] Both §§ 704 and 794 (1) ZPO and other relevant provisions set down clearly the enforceable titles under the German laws and international laws. § 794 (1) ZPO makes a list of enforceable title other than judgments, including:

a) Settlements concluded by the parties, or between one of the parties and a third party, in order to resolve the legal dispute either in its full scope or as regards a part of the subject matter of the litigation, before a German court or before a dispute-resolution entity established or recognized by the state department of justice, as well as based on settlements that have been recorded pursuant to § 118 (1) S. 3, or § 492 (3) for the record of the judge;

b) Orders assessing the costs;

c) Decisions subject to a complaint in terms of §§ 567 et seq. ZPO;

d) A payment order in terms of § 699 ZPO;

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[204] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 497.

[205] BGHZ 35, 340; BGH, NJW 1961, 1969.

[206] *Kern, Christoph A.*: National Report for Germany, Part I. p. 22; *Murray/Stürner*: German Civil Justice, 2004, p. 541-542.

[207] *Kern, Christoph A.*: National Report for Germany, Part I. p. 22.

e) The exequatur of arbitral awards or settlements reached among attorneys in terms of § 796a ZPO;

f) The enforceable deed as defined in § 794 (1) No. 5 and § 794 (2) which formulates some important caveats for the protection of the debtor;

g) Titles which have been created according to EU's law on civil procedure (§ 794 (1) No. 6-8);

h) Titles from other member states of EU in civil and commercial matters which are directly enforceable in Germany due to the Brussels Ibis Regulation.

§ 794 ZPO cannot be read on its own but refers to many other legal provisions, namely: (1) The settlement as enforceable pursuant to § 794 (1) No. 1 ZPO is recorded according to § 160 (3) No. 1 ZPO.[208] (2) The substantive (i.e. not procedural) definition and effects of a settlement are defined in § 779 BGB.[209] Orders assessing the costs in the sense of § 794 (1) No. 2 ZPO are stipulated in § 103 ZPO and in other articles of the ZPO.[210] Settlements reached among attorneys are specified in §§ 796a - 796c ZPO.[211] Payment orders in terms of § 794 (1) No. 4 ZPO are described in §§ 699 and 700 ZPO. Decisions declaring arbitration awards as enforceable in the sense of § 794 (1) No. 4a are regulated in § 1060, other articles of the Code and in the New York Convention.[212] An arbitral award is foreign if the seat

[208] § 160 (3) No. 1 ZPO: The record of the hearing is to set out any acknowledgments, abandonments of claims, and settlements.

[209] § 779 BGB: 1) A contract by which a dispute or uncertainty of the parties with regard to a legal relationship is removed by way of mutual concession (settlement) is ineffective if the fact situation used as a basis according to the contents of the contract does not correspond to reality and the dispute or uncertainty would not have occurred if the facts had been known. 2) It is equivalent to uncertainty about a legal relationship if the realization of a claim is uncertain.

[210] For example, § 103 ZPO: 1) A claim to reimbursement of the costs of the proceedings may be asserted only based on a legal documents (title) suited for compulsory enforcement. 2) The petition for assessment of the amount to be reimbursed is to be filed with the court of first instance. The computation of the costs, the copy intended for forwarding to the opponent, and the proof serving to justify the individual cost items are to be attached to the petition.

[211] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3 Aufl. 2016, § 796a, p. 417-420.

[212] § 1060. Domestic Arbitration Awards of the ZPO: 1) Compulsory enforcement is an available remedy provided the arbitration award has been declared enforceable. 2) The petition for a declaration of enforceability to be issued is to be denied, while reversing the arbitration award, if one of the grounds for reversal designated in § 1059 Para. 2 is given. Such grounds for reversal shall not be taken into account insofar as a petition for a reversal based on these grounds has been denied, in a final and binding judgment, at the time the petition for declaration of enforceability is received. Grounds for reversal pursuant to § 1059 Para. 2 No. 1 also shall not be taken into account if the periods determined in § 1059 Para. 3 have expired, without the respondent having filed a petition for reversal of the arbitration award.

§ 1064. Special aspects of declaring arbitration awards enforceable of the ZPO: 1) The arbitration award, or a certified copy of same, is to be enclosed with the petition for a declaration of enforceability of an arbitration award. The certification may also be performed by the attorney retained and authorized for the court proceedings. 2) The court order by which an arbitration award is declared enforceable is to be declared provisionally enforceable. 3) Subsections (1) and (2) are to be applied to foreign arbitration awards, unless otherwise provided for in treaties.

of arbitration is in a country other than Germany.[213] The rules for recognition and enforcement of foreign arbitral awards are provided in the §§ 1061 to 1065 ZPO.[214] The § 1061 (1) ZPO regulates that foreign arbitral awards are to be recognized and enforced according to the New York Convention. However, there are hardly any differences in comparison to the enforcement of a domestic award, and the foreign arbitral award is not treated less than domestic ones.[215] The enforcement of titles mentioned in § 794 (1) No. 6-9 is subject to the rules set out in the European regulations. For example, Art. 5 Regulation No. 805/2004 states that a judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

According to the general principles about the preconditions of enforcement, each effective title as defined in §§ 794 to 801 ZPO may be a basis of execution. In addition to these provisions, decisions reached in non-contentious procedures, namely family matters are also enforced under §§ 704 et seq. ZPO, subject to the conditions set out by § 95 FamFG. However, foreign judgments (save those mentioned in § 794 (1) No. 7 and 9) are not covered by § 704 ZPO; they are subject to a special recognition procedure stipulated in §§ 722 et seq. ZPO or special provisions like the Anerkennungs- und Vollstreckungsausführungsgesetz (AVAG).[216]

Other provisions on the enforceable titles can be found in the Insolvency Statute, e.g., § 201 (2) InsO or § 257 (1) InsO. The § 201 (2) InsO provides that an insolvency creditor of a claim which has not been contested by the debtor during the insolvency's verification meeting may enforce such a claim on the legal basis of their registration in the insolvency table under the same conditions as under an enforceable judgment. The § 257 (1) InsO states that the insolvency creditors with determined claims which were not contested by the debtor at the verification meeting may execute these claims under an approved and under the final insolvency plan in connection with their registration in the insolvency table.

According § 93 of the Compulsory Auction of Immovable Property Act (*Zwangsversteigerungsgesetz*, ZVG), the person who was awarded real estate in a public auction has an enforceable title as regards eviction of the real estate.[217]

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[213] § 1025 (1) ZPO.

[214] § 1025 (4) ZPO.

[215] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 134, 189.

[216] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 704, Rn. 2, p. 34.

[217] § 93 ZVG: 1) Compulsory enforcement to vacate and surrender against the possessor of the plot of real estate or an object that was also auctioned shall take place based upon the order through which the acceptance the highest bid is issued. If, nevertheless, the compulsory enforcement takes place, the possessor may lodge an

Coming into force are final judgments, as soon as having formal legal validity according to § 705 ZPO. The provisional enforceability of the final judgment of the ordinary jurisdiction is precisely regulated in §§ 708 et seq. ZPO. The final judgment of the labor court is provisionally enforceable according to § 62 (1) ArbGG.

The above analysis shows that §§ 704 et seq. ZPO containing the German rules of enforcement apply to many judgments, decisions and other legal documents and have therefore a very wide scope of application.

V. The timelines for enforcement procedures should be reasonable and foreseeable time limits

1. International requirements on the timelines for enforcement procedures

The "enforcement time" term means the duration of time between the start and the completion of the enforcement procedure. The totality of the time necessary to perform all the actions performed by the enforcement agent must be consistent with a reasonable delay.[218]

The length of enforcement proceedings must also be appraised in accordance with the same criteria as the length of the main proceedings. In the main proceedings, the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's caselaw, in particular the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities. The time taken for any enforcement proceedings in calculating the overall period. Enforcement of a decision must be considered as an integral part of the "trial" within the meaning of Art. 6 ECHR. The excessive length of enforcement proceedings on the basis of infringements both of the right to a fair hearing (Art. 6 § 1) and of the right to respect for property secured by Art. 1 of Protocol 1, which illustrates the importance of the enforcement phase for the effective implementation of the right guaranteed.[219]

In order to explain the concept of the immediately enforceable nature, Art. 4 of the GCE requires the beneficiary of an enforceable judgment shall not be required to have recourse to other legal procedures to obtain enforcement. Under the ALI/Unidroit Principles of Transnational Civil Procedure, there are three types of judgments should be enforced immediately including: (1) the final judgment of the first instance court ordinarily; (2) the first instance court or the appellate court, on its own motion or motion of a party, may in the interest of justice stay enforcement of

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apposition thereto pursuant to the requirements in Art. 771 of the Code of Civil Procedure. 2) The purchaser shall not be obligated to reimburse outlays made prior to the acceptance of the highest bid.

[218] *The Scientific Council of the UIHJ*: GCE, 2016, p. 201.

[219] *Calvez, Françoise/Regis, Nicolas*: Length of Court Proceedings in the Member States of the CoE based on the Case Law of the ECtHR, CEPEJ (2018)26, p. 16, 36, 37.

the judgment pending appeal, and (3) security may be required from the appellant as a condition of granting a stay or from the respondent as a condition of denying a stay. Another opinion is that there should be no postponement of the enforcement process unless there are reasons prescribed by law.[220] A postponement may be subject to review by the court. However, interventions by the state in the enforcement of court decisions or a stay of enforcement of a court decision for the period of time strictly necessary to find a satisfactory solution to the problems of a public policy nature may be justified in certain circumstances,[221] or only the assistance of the forces of public order.[222] Enforcement shall proceed without the need for further action by the applicant is another international requirement when a decision has been declared enforceable.[223]

About the speed of enforcement, Art. 6 of the GCE provides that the enforcement must be carried out by the enforcement agent or the judicial diligently and within a reasonable timeframe. The most important concept relating to the speed of enforcement is "within a reasonable period of time". The first and foremost evidence of this is that assets should be sold promptly while still seeking to obtain the highest market value and avoiding any costly and unnecessary depreciation.[224] Timeframe for enforcement procedures are also stipulated in the Guidelines for a better implementation of enforcement of 17 December 2009 including reasonable and foreseeable time limits and factors of smooth and prompt enforcement. In addition, member states should establish databases calculating the likely duration of the different enforcement measures, e.g., attachment of salary, attachment of bank assets and attachment of vehicle, etc.[225] The time required to enforce a court judgment is a major concern for businesses and court users in every jurisdiction. The speed of enforcement or enforcement time frame, which calculating from the date of a court judgment to the final recovery depends on a variety of elements, e.g., the complexity of the case, the number of appeals and its procedures, a number of applications seeking court interpretations of enforcement orders as a tactic to delay the enforcement process, suspension of the enforcement process, etc. The average speed of enforcement may last around two months in the CIS and the region.[226] It lasts from four months in Georgia to one year in Ukraine and the popularity is four months in

[220] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.1.f.

[221] ECHR, Matheus v. France, 31 March 2005, No 62740/00.

[222] ECHR, Sofiran & BDA v. France, 11 July 2013, No 63684/09.

[223] The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Art. 32-35.

[224] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.7.

[225] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 63-65.

[226] E.g., Azerbaijan, Kazakhstan, the Kyrgyz Republic, Russia, Tajikistan.

most countries in the SEE region.[227] In which Bosnia and Herzegovina and Slovenia are exceptions, where over six months is common, in extreme cases the process could last up to two years.[228]

Factors of smooth and prompt enforcement may include swift communication between the court, the enforcement agents and the parties; robust legal framework of enforcement; the necessary autonomy of the enforcement agents; unjustifiably halt or delay the enforcement proceedings from the defendant; and an accelerated and emergency enforcement procedure etc. Reaching agreement between the parties in order to coordinate enforcement timeframe is also recommended.[229]

Unreasonable delays in the enforcement of judgments are the main reasons explain why the ECtHR has given numerous decisions against the States.[230] It sanctions States for the slow enforcement of judgments.[231] According to the ECtHR, the non-reasonability of a delay in enforcement are the complexity of the case, the behavior of the petitioner and that of the competent authorities as well as the importance of the litigation to the interested party.[232] Enforcement agent must act diligently in order to enforce a judgment as quickly as possible, except for some special circumstances, e.g., the rigor of cases or a certain degree of complexity of cases.[233] Regulation (EU) No. 655/2014 states that where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the tenth working day after the creditor lodged or, where applicable, completed his application.[234] Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the fifth working day after the creditor lodged or, where applicable, completed his application.[235] Relating to the diligence of enforcement agents, Art. 23 Para. 2 of this Regulation regulates that all authorities involved in the enforcement of the Order shall act without delay or enforcement agents must proceed to the service of the order without delay.[236] Another international requirement for enforcing is that

[227] The SEE region member states are Albania, Bosnia and Herzegovina, Croatia, Kosovo, FYR Macedonia, Montenegro, Serbia, and Slovenia.

[228] *Fariello, Frank/Boisson de Chazourmes, Laurence/E. Davis, Kevin*: The World Bank Legal Review, Vol. 7, p. 249; *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 10, p. 1760.

[229] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 66-71.

[230] The GCE, p.154.

[231] *Calvez, Françoise/Regis, Nicolas*: Length of Court Proceedings in the Member States of the CoE based on the Case Law of the European Court of Human Rights, CEPEJ (2018)26, p. 36, 37.

[232] *N. Fricero*: Dalloz Action Droit et pratique de la procédure civile, 2014-2015, dir. S. Guinchare, No. 212.121 s.

[233] ECHR, No. 28142/04, Bendayan Azcantot & Benalal Bendayan v. Spain, § 74.

[234] Regulation (EU) No. 655/2014, Art. 18-1. This Regulation imposes a diligence requirement on the courts to which application is made.

[235] Art. 18-2.

[236] Art. 28.

judgments must be enforced immediately or the court should resolve the dispute within a reasonable time.[237] Furthermore, while being respectful of national law, the promptness requirement of the enforcement agencies is also one of the undoubted highlights under the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.[238]

Rapidly accelerating the speed of execution does not mean judgments shall be enforced at any time even at rest. Whereby, enforcement may not take place outside the legal hours determined in accordance with the national law of the State of enforcement (Art. 7 of the GCE). According to the Art. 6 and Art. 8 ECHR, the private life of the parties is required and must be protected by the national law.[239] In general, on Sunday or a public holiday or before 8 a.m. or after 6 p.m. enforcement measures are prohibited, with the exception of necessity and by virtue of a special authorization of the president of the court in whose jurisdiction the enforcement is carried out, or with the authorization of the competent court and only in places not used as dwellings.[240]

2. The timelines for enforcement procedures in Vietnam

Vietnam's CJE law has not yet defined "enforcement time". The total time of judgment execution depends on each type of judgment execution (proactive enforcement agencies or at the request of the involved parties), the characteristics of each type of judgment, decision and its complexity, etc. The enforcement law of Vietnam only introduces the concept of “the course of judgment enforcement”, e.g., in the course of judgment enforcement, rights and legitimate interests of involved parties and persons with related rights and obligations shall be respected and protected by law (Art. 5 of the LECJ). However, how is “the course of execution” is not explicitly stated in the enforcement law.[241] On the basis of the LECJ and the legal guiding documents and especially in the Decision No. 273/QD-TCTHADS, the process of judgment execution includes three main stages: receiving a written request for judgment enforcement (considered as the beginning stage of the judgment execution process); stage of judgment execution; and verification, record of judgment execution (stage of conclusion of judgment execution).

The enforcement procedures are provided in Chapter III, Art. 26 to Art. 65 of the LECJ, and can be briefly prescribed as follows:

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[237] The ALI/Unidroit Principles of Transnational Civil Procedure, Principle No. 26.

[238] Art. 32-35.

[239] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.1.g.

[240] The Uniform Act, Art. 46.

[241] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 5, p. 46-47.

a) Handover and sending of judgments and rulings

Courts, the President of the National Competition Commission, the anti-competitive settlement Council, the anti-competitive complaint handling Council and commercial arbitrations rendered judgments, rulings and awards hand over to involved parties, these judgments, rulings and awards written with the phrase *"For Enforcement"*.[242] They have to explain to involved parties about the contents of, and at the same time clearly state in, these judgments, rulings or awards the right to request enforcement, enforcement obligations and the statute of limitations for filing such request.[243] Currently, the LECJ and other related legal documents have not clear provisions on explanation of judgments and decisions. For example, in what form the explanation will be done; the specific contents that need to be explained; the court's responsibility, the President of the National Competition Commission, the anti-competitive settlement Council, the anti-competitive complaint handling Council and commercial arbitration if they do not perform their duty on explanation. If there are any damages arising, the judge, who issues the decision, and other competent persons will have to take responsibility (e.g., administrative, civil or criminal sanctions) or not? These are still legal gaps in the Vietnamese legal system, which should be researched, supplemented and completed as soon as possible.[244]

b) The statute of limitations for requesting judgment enforcement

To protect the interests of involved parties, the enforcement law stipulates that the statute of limitations for requesting judgment enforcement is five years. Accordingly, within five years after a judgment or ruling takes legal effect, the JC and JD may request a competent CJE agency to issue a judgment enforcement decision. If a time limit for fulfilling an obligation is set in the judgment or ruling, the five-year statute of limitations will be counted from the date the obligation is due. For judgments and rulings subject to periodical enforcement, the five-year statute of limitations will apply to each period and be counted from the date the obligation is due. However, this regulation on the enforcement of Vietnam seems to contradict with the international requirements on the limitations for requesting judgment enforcement. The Guidelines for a better implementation of enforcement of 17 December 2009 requires that member states do not impose any arbitrary cutoff deadlines for enforcement to end.[245]

Depending on the different types of judgments and rulings, the courts, the Council for handling of competition cases and commercial arbitrations rendered these

[242] The LECJ, Art. 27.

[243] The LECJ, Art. 26.

[244] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 26, p. 180-181.

[245] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 63.

judgments and rulings must send them to competent CJE agencies in a different period. For example, within 30 days after the judgments and rulings, e.g., judgments and rulings of first-instance courts against which are not appealed or protested against according to appellate procedures take legal effect, courts who rendered these judgments have to send them to competent CJE agencies, while rulings on application of provisional urgent measures, immediately after making them, courts have to send them to CJE agencies.[246] For judgments and rulings on alimony, salary or wage payment, severance allowance, job-loss allowance, working capacity loss allowance or compensation for loss of life or damage to health or mental harm, or reemployment of dismissing employees, courts who rendered these judgments must send them to CJE agencies within 15 days after making them. In many cases, although the judgment has taken legal effect, but the court was often slow to transfer to the ECJs, especially appellate judgments, cassation or retrial.[247]

c) The time limits for preparation for trial at first-instance courts

The process of judgment execution has a close relationship with the trial activities of the court. Therefore, it is essential for understanding the enforcement process to have a general analysis of the litigation process.

According to the Art. 203 of the CPC 2015, the time limits for preparation for trial at first-instance courts over cases of various types, except for cases resolved under simplified procedures or cases involving foreign elements. For example, the cases prescribed in Art. 26 and 28 of this Code, the time limit shall be 04 months counting from the day on which the cases are accepted.[248] For the cases prescribed in Art. 30 and 32 of this Code, the time limit shall be 02 months counting from the day on which the cases are accepted.[249] For complicated cases, or when due to force majeure events or objective obstacles, the Chief Justices of courts may decide to extend the trial preparation time limits, but for not more than 02 months or 01 month depending on each case. If there are decisions on suspension of case resolution, the time limit for trial preparation shall be calculated from the day on which the decisions to resume the case resolution issued by the courts take legal effect.

[246] More detail sees the LECJ, Art. 2 and Art. 28.

[247] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 28, p. 187-188 and Art. 29, p. 191-192.

[248] Art. 26. Civil disputes falling under the courts' jurisdiction and Art. 28. Marriage and family-related disputes falling under the courts' jurisdiction.

[249] Art. 30. Business and/or trade disputes falling under the courts' jurisdiction and Art. 32. Labor disputes falling under the courts' jurisdiction.

Within one month from the day on which the decision to bring the case to trial is issued, the court must open a court session. In case of good and adequate reason, this time limit shall be 02 months.[250]

It is estimated that it takes approx. from 04 to 08 months in the course of the first-instance trial, starting the day on which the cases are accepted until the day of which the court brings the case to trial.[251] The day on which the cases are accepted is the day when the litigators have submitted to the courts the court fee advance payment receipts.[252] If the judgment or decision of the first-instance court has not yet taken legal effect and being appealed against by the involved parties or their representatives, agencies, organizations or individuals or procuracies, they will be appealable trialed.

d) The time for appellate trials

The time for appellate trials lasts approx. 05 months, starting the day on which, the petition is accepted until the day on which the court brings the case to an appellate trial.[253]

The total timelines in preparation for the first-instance trial and the appellate trial will last around from 9 months to 13 months without counting the time for actual trial before sending a judgment to competent enforcement agencies.

Upon receiving a judgment or ruling of a court, the CJE agency shall check it and record it in a book. The in-person delivery and receipt of a judgment or ruling must be certified by the signatures of the deliverer and recipient. In case a judgment, ruling or related document is sent by post, the enforcement agency shall have to notify in writing to the sending court of the receipt.[254]

Meanwhile, Art. 262 Para. 2 of the 2015 Criminal Procedure Code regulates that an appellate court, in 10 days upon pronouncing a judgment or issuing a ruling, must deliver such appellate judgment or ruling to the competent authority enforcing civil sentences (the appellate judgment expressing pecuniary fines, confiscation of property and civil rulings). If the higher people's court hears the appeals, the time limit stated above may be extended for 25 more days at most. Inconsistent with this regulation, Art. 28 Para. 1 of the LECJ provides that courts that make judgments and rulings of courts of appeal, within 30 days after these judgments and rulings take legal effect, deliver them to competent civil judgment enforcement agencies. The inconsistency on time delivery of appeal judgments mentioned above has caused

[250] The CPC 2015, Art. 203 Para. 4.
[251] The CPC 2015, Art. 203.
[252] The CPC 2015, Art. 195 Para. 3.
[253] The CPC 2015, Art. 286.
[254] The LECJ, Art. 29.

difficulties for enforcement activities, resulting in delayed enforcement of the judgment or confusing for the executor and the judge.[255]

e) The common provisions on the enforcement procedures

The LECJ divided the execution of the civil judgments and decisions of the courts into two categories, i.e., judgment enforcement procedure based on the request of the involved parties and proactive enforcement of the civil judgment agencies (enforcement based on own motion/at own will of the executors).[256] Types of judgments based on the request of the involved parties, i.e., civil judgments, criminal judgments related to the property, administrative judgments related to the property, marriage and family judgments, business and commercial judgments, labor-related judgments, bankruptcy settlement decisions of courts, decisions on settlement of competition cases related to assets of judgment debtors by the Council for settlement of competition cases, commercial arbitration awards and other judgments. These types of judgments often involve charging enforcement fees or collecting money or assets for the state budget from criminal cases (see the analysis below). Types of judgments based on own motion of the executors, i.e., civil judgments, criminal judgments related to the property, administrative judgments related to the property, marriage and family judgments, business and commercial judgments, labor-related judgments, bankruptcy settlement decisions of courts, commercial arbitration awards and other judgments.[257] Corresponding to it, there are two ways of starting an enforcement process.[258]

Firstly, enforcement may be initiated by the request of the JCs or JDs. It means that, in Vietnam, not only the JCs, but also the JDs have the right to request the CJE agencies to enforce the judgments and decisions of the courts. In this respect, the commencement of the enforcement procedure in Vietnam is conducted similarly to German law. There is no ex officio enforcement of the judgment and the creditor must file an application for enforcement.[259] For these types of enforcement, the time limit for issuing a judgment enforcement decision is 5 working days after receiving a written request for judgment enforcement.[260]

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[255] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 28, p. 187-188.

[256] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments in Vietnam, 2018, p. 47, 229-239; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 85; the LECJ, Art. 36.

[257] *The General Department of Civil Judgment Execution, Ministry of Justice*: Report No. 170/BC-TKDLCT, 2018, p. 37-40; the LECJ, Art. 1.

[258] The LECJ, Art. 36 Para. 1 and Para. 2; *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments, 2018, Art. 7, 7a and 7b, p. 85.

[259] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 496.

[260] The LECJ, Art. 36 Para. 1 S. 2.

Secondly, another way of commencing an enforcement process is done by the competent person of the judgment enforcement agency. Accordingly, heads of CJE agencies have to issue at their own will (on their own motion) a judgment enforcement decision for the following parts of judgments and rulings, including: (1) fines, retrospective collection of illicitly earned money and assets, court fees and charges; (2) refund of money and assets to involved parties; (3) confiscation into the state budget or destruction of material evidence and assets; other state budget remittances; (4) recovery of the rights to use land and other assets subject to remittance into the state budget; (5) decision on application of provisional urgent measures; and (6) decision on bankruptcy settlement of the court.

Within 05 working days after receiving judgments/rulings or requests as already mentioned, from point (1) to point (4), heads of CJE agencies shall issue judgment enforcement decisions. For decisions specified at point (5) above, they shall issue judgment enforcement decisions without delay. For decisions specified at point (6), they shall, within 03 working days after receiving such decisions, issue judgment enforcement decisions.[261]

For both types of civil judgment enforcement above, within 02 working days from the date of assignment, the enforcement executor shall compile the CJE dossier.[262]

Judgment enforcement decisions, notices, summons and other documents related to judgment enforcement must be notified to involved parties and persons with related rights and obligations for them to exercise their rights and perform their obligations according to the contents of these documents.

In order to enforce the judgment, enforcers shall verify the judgment execution conditions of JDs. Within 10 days after issuing judgment enforcement decisions at their own will or after receiving the JCs' requests for verification, enforcers shall conduct verification. In case of implementation of decisions on application of provisional urgent measures, verification must be conducted without delay.[263]

The time limit for voluntary execution of a judgment is 10 days after the JD receives or is properly notified of, the judgment enforcement decision. In case of necessity to prevent JDs from dispersing or destroying assets or shirking the judgment enforcement, enforcers may promptly apply measures specified in the law.[264]

Upon the expiration of the time limit specified above, JDs who have judgment execution conditions but fail to voluntarily execute judgments shall be coerced to do

[261] The LECJ, Art. 36 Para. 2.

[262] Decree No. 62/2015/ND-CP, Art. 8 Para. 1 S. 2.

[263] The LECJ, Art. 44 Para. 1.

[264] The LECJ, Art. 45.

so. Executors may, at their own will or under the request in written of the involved parties promptly apply measures to secure judgment enforcement in order to prevent dispersal or destruction of assets or shirking of judgment enforcement. Under the enforcement law, subject to coercive enforcement are not only assets being objects, but also assets being intellectual property rights and valuable papers of judgment enforcement debtors. It also introduces the measure of coercive exploitation of assets for judgment enforcement.

Below is a diagram of the process of CJE in Vietnam as defined in the Decision No. 273/QĐ-TCTHADS:

Diagram 1: The Process of Civil Judgment Enforcement in Vietnam[265]

	Acceptance of Enforcement *(1st Stage)*	Process of Civil Judgment Enforcement *(2nd Stage)*	Inspection of dossiers *(3rd Stage)*
	→ Receiving a request/a court judgement (Art. 31, Art. 28, and 29), or entrustment documents (Art. 55, 56, and 57) → Checking the contents of the request/ the court judgments and entrustment documents (Art. 29, 31, and 57) → Issuance of judgment enforcement decisions (Art. 36)	→ Compilement of the CJE dossier (Art. 8 Decree No. 62/2015/ND-CP) → Notification (Art. 39, 40, 41, 42, and 43) → Verification of judgment execution conditions (Art. 44) → Verification of lacking judgment execution conditions (Art. 44a) → Suspension (Art. 49), Termination (Art. 50), and Entrustment (Art. 55) → Exemption or Reduction (Art. 61, 62, 63, and 64) → Reviewing court judgments or decisions (Art. 49, 117, 134, 135, 136, and 170) → Application of measures to secure judgment enforcement (Art. 66, 67, 68, and 69)	→ Inspecting of the CJE dossiers (Art. 67 Decree No. 62/2015/ND-CP) → File the CJE dossiers (Art. 8 Decree No. 62/2015/ND-CP, and Decision No. 734/QĐ-TCTHADS)

[265] All articles in this table are cited from the LECJ.

	Acceptance of Enforcement *(1st Stage)*	Process of Civil Judgment Enforcement *(2nd Stage)*	Inspection of dossiers *(3rd Stage)*
		→ Issuing decisions on coercive measures (Art. 70, 107) → Organizing coercive enforcement (Art. 46, 88, 173) → Valuation organizations of distrained assets (Art. 98) → Sale of distrained assets (Art. 101, 102, 103, and 104) → Destruction of evidence or property (Art. 33 Decree No. 62/2015/ND-CP) and Handling of seized material evidence and assets which are pronounced to be confiscated into the state budget (Art. 124) → Return of seized money and assets (Art. 126) → Collection money (Art. 79, 80, and 81); Payment and return of assets (Art. 47); CJE fee (Art. 60) → Certification of	

	Acceptance of Enforcement *(1st Stage)*	Process of Civil Judgment Enforcement *(2nd Stage)*	Inspection of dossiers *(3rd Stage)*
		judgment enforcement results (Art. 53) → Review the CJE dossiers (Art. 8 Decree No. 62/2015/ND-CP)	
Competent Persons	- Department of CJE: Office - Sub-department of CJE: verifiers or clerks	- Department of CJE: The Division of Professional and Judgment Execution Organization, and executors. - Sub-department of CJE: Deputy Director and executors.	- The Department of CJE: The Division of Examination and settlement of complaints and denunciations - Sub-department of CJE: verifiers or clerks

f) Legal hours of enforcement

The enforcement of judgments in many cases related to the operation of many agencies and different organizations; sometimes causing annoyance to those involved, cause psychological stress in communities where the enforcement is conducted. In addition, to protect the fundamental human rights of citizens in accordance with the provisions of the Constitution and the international legal documents relating to human rights that Vietnam is a member, and create favorable conditions for organizing the enforcement of judgments, minimize the negative reactions from the parties who are involved and public opinion, the Vietnamese law prescribes a number of limitations on the period of time in which the coercive

measures are not implemented.[266] For the purpose of protecting the private and family life of the debtor, the holiday and the nighttime, in which the act of performance prohibited except in special cases. Coercive enforcement of judgments shall be prohibited from 22:00 hrs. to 6:00 hrs., or weekends and holidays as provided by law and in other special cases specified by the Government.[267] According to the Art. 13 Para. 2 Decree No. 62/2015/ND-CP, in the cases in which forcible measures must not be taken prescribed in the LECJ, the judgment enforcement authority shall not take forcible measures for 15 days before and after Lunar New Year's Eve, the traditional days for beneficiaries of incentive policies who are JDs, and in other cases that jeopardize the social or political order or local traditions. JDs shall bear the expenses for coercive judgment enforcement.

According to the Art. 115 of the 2012 Labor Code of Vietnam, Public and New Year holidays includes Calendar New Year Holiday: 01 day (the first day of January of the calendar year); Vietnamese Lunar New Year Holidays/Vietnamese New Year Traditions is the most important Festival of the Vietnamese people: 05 days; Victory Day: 01 day (the thirtieth day of April of each calendar year); International Labor Day: 01 day (the first day of May of each calendar year); National Day: 01 day (the second day of September of each calendar year); Commemorative Celebration of Vietnam's Forefather - Kings Hung: 01 day (the tenth of March of each lunar year). Foreign employees in Vietnam, in addition to the public holidays stipulated above, are entitled to 01 traditional new year holiday and 01 national day of their country. In case a holiday referred above falls on a weekend, employees are entitled to take the following days off as compensation. In addition, according to the Art. 116 of the 2012 Labor Code of Vietnam, personal leave or unpaid leave includes Marriage: 03 days; Marriage of his/her child: 01 day; Death of a blood parent or a parent of his/her spouse, his/her spouse or child: 03 days. An employee may take 01 day off without pay and shall inform the employer when a paternal or maternal grandparent or blood sibling dies; his/her father or mother get married; or a blood sibling gets married. An employee may discuss and agree with the employer on unpaid leave in addition to the leaves specified in the Art. 116 of the 2012 Labor Code of Vietnam.[268] In general, the execution falls on the holidays listed above will be banned.

g) Sale of distrained assets in order to enforce the judgments

Distrained assets shall be sold by the following modes: auction or non-auction sale. Asset auction service contracts shall be signed within 10 days after the date of asset

[266] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 46, p. 271-272.

[267] The LECJ, Art. 46 Para. 2.

[268] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 46, p. 272.

valuation. An auction shall be conducted within 30 days, for movables, and 45 days, for real estate, from the date of contract signing.[269] In fact, the procedure for enforcing the CJE in Vietnam is still very complicated and time-consuming.[270] Identification, division and handling of common assets for judgment enforcement below is a typical example:[271]

aa) In case of failing to identify the proportion of asset ownership or land use rights of the JD in the common assets for judgment enforcement, the enforcer shall notify the JD and co-owners of assets or land use rights so that they reach an agreement on division of common assets or request the court to settle the case according to civil procedure.

Past 30 days after receiving the notification, if no agreement is reached by the parties or their agreement violates the LECJ or they cannot reach an agreement or do not request the court to settle the case, the enforcer shall notify the JC of his/her right to request a court to identify the proportion of asset ownership or land use rights of the JD in the common assets according to civil procedure.

Past 15 days after receiving the notification, if the JC fails to request the court to settle the case, the enforcer shall request the court to identify the proportion of asset ownership or land use rights of the JD in the common assets according to civil procedure. The enforcer shall handle assets, according to the court's decisions.

bb) Distrained assets under common ownership of which ownership proportions of co-owners have been identified shall be handled as follows: (1) For dividable common assets, the enforcer shall apply coercive measures regarding the asset proportion owned by the JD; (2) For undividable common assets or in case the division considerably reduces the asset value, the enforcer may apply coercive measures regarding all assets and pay to other co-owners the value of asset proportions under their ownership.

cc) Co-owners have the preemptive right to buy the asset ownership proportion of the JD in the common assets. Before the first-time sale of the asset ownership proportion of the common assets, the enforcer shall notify and determine a time limit for co-owners to buy the asset ownership proportion of the JD at determining prices *within 3 months for real estate and a month for movables*. For subsequent asset sales, the time limit is 15 days after the valid notification is made.

[269] The LECJ, Art. 101 Para. 2.

[270] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 101, p. 488-489.

[271] The LECJ, Art. 74.

Within 5 working days after the time limit for preemptive right expires, if co-owners do not buy assets, the assets may be sold according to the Art. 101 of the LECJ (sale of distrained assets).

The above regulation is not completely consistent with the reality. Therefore, it is necessary to study and amend the above provisions, which define only the court should be the body competent to divide the common property at the civil judgment execution stage. Therefore, should consider abolishing the provisions "past 15 days after receiving the notification, if the JC fails to request the court to settle the case, the enforcer shall request the court to identify the proportion of asset ownership or land use rights of the JD in the common assets according to civil procedure".[272] In addition, the period of priority to purchase common property should be shorten.[273]

It is an accepted fact that the time for identification, division and handling of common assets for judgment enforcement related to assets for judgment enforcement lasts so long with several months even several years and often require to have recourse to other legal procedures to obtain enforcement. This restriction of the enforcement law of Vietnam is inconsistent with the requirements of international law, that is the legal framework of enforcement is unnecessarily prolonged.[274]

In addition, enforcers are not one of the involved parties, they are persons tasked by the State to enforce judgments and rulings prescribed under the LECJ.[275] However, this law granted the enforcer the right to request the court to identify the proportion of asset ownership or land use rights of the JD in the common assets, etc.[276] These regulations have led to the great burden for enforcers when they work as involved parties in civil cases. They simultaneously play two actors: executor and the involved party. Last but not least, under the enforcement law of Vietnam, the time in which the enforcement measures is prohibited is quite short (no coercive enforcement of judgments shall be conducted from 22:00 hrs. to 6:00 hrs.) in comparison to the international requirement (act of performance may be begun before 18:00 hrs. or after 8:00 hrs.). This limited time period is also shorter in comparison to the requirement of the Uniform Act which is no act of performance may be begun before 8 a.m. or after 6 p.m.[277]

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[272] The LECJ, Art. 74 Para. 1.

[273] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 74, p. 419.

[274] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 66.

[275] The LECJ, Art. 17 Para. 1.

[276] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 75, p. 424-426.

[277] The Uniform Act, Art. 46.

In order to protect the fundamental right of the JD and other relevant people, Art. 46 Para. 2 S. 1 of the LECJ regulates that no coercive enforcement of judgments shall be conducted from 22:00 hrs. to 6:00 hrs. At the same time, the application of security measures and forcible measures must be suitable for the JD's obligations and necessary costs, except for the case the JD voluntarily gives up a specific piece of property which is sufficient to satisfy the judgment and cover relevant costs.[278] Where the JD only has one piece of property whose value is far higher than his/her liability and such property cannot be divided or will significantly lose its value if divided, the enforcement executor is still entitled to apply security measures and forcible measures to satisfy the judgment.[279]

3. The recognition and enforcement of small claims

a) International regulations on the recognition and enforcement of small claims

Until now, there are several international regulations mentioning the resolution of civil lawsuits, according to simplified procedures as well as simplifying and speeding up the enforcement of small claims, e.g., Regulation No. 805/2004; EOP and ESCP which were amended by Regulation (EU) 2015/2421; Green Paper of the Commission of the European Communities on a European Order for Payment Procedure and on Measures to simplify and speed up small claims litigation (Brussels, 20.12.2002, COM (2002) 746 final); Directive 2000/35/EC; Proposal for a Regulation of the European Parliament and the Council creating a European order for payment procedure (Brussels, 25.05.2004, COM (2004) 173 final); Amended Proposal for a Regulation of the European Parliament and the Council creating a European order for payment procedure (Brussels, 07.02.2006, COM (2006) 57 final); Proposal for a Regulation of the European Parliament and the Council establishing a European Small Claims Procedure (Brussels, 15.03.2005, COM (2005) 87 final), etc. The main purposes and contents of these legal documents may include:

Firstly, abolition of exequatur. The requirement of the exequatur was the first private international law instruments dealing with the recognition and enforcement providing in the Brussel I Regulation dated 27 September 1968. According to this Regulation:

"A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there".[280]

[278] Decree No. 62/2015/ND-CP, Art. 13 Para. 2 Sub-para. 2 S. 1 and Art. 24 Para. 4.

[279] Decree No. 62/2015/ND-CP, Art. 13 Para. 2 Sub-para. 2.

[280] Art. 31.

One of the three new instruments, abolishing the exequatur was prepared by a Green Paper on a European Order for Payment Procedure and on Measures to simplify and speed up small claims litigation.[281] This Green Paper provided a two-tiered approach, including abolishing the exequatur for uncontested claims in EU, and creating a specific harmonized procedure for the recovery of uncontested claims and measures to simplify and to speed up small claims litigation.[282] Representing the first layer is Regulation No. 805/2004 creating a European Enforcement Order for uncontested claims.[283] This Regulation marked the beginning of a new era for the recognition and enforcement of decisions.[284] Art. 5 of this Regulation stipulates that

"A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition".

Results from the second layer of the Green Paper approach, including EOP and ESCP. Both Regulations included regulations on abolition of the exequatur. For example, a European order for payment which has become enforceable in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.[285]

Continue to inherit and develop the advantages of the above provisions, Regulation (EU) 1215/2012 insists that a judgment given in a Member State shall be recognised and enforceable in the other Member States without any special procedure being required as well as any declaration of enforceability being required.[286]

Secondly, the purpose of these regulations is to simplify, speed up, reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.[287]

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[281] *The Commission of the European Communities*: Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation, Brussels, 20.12.2002 COM (2002) 746 final.

[282] *van Rhee, C. H. /Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 20; COM (2002) 159 Final.

[283] Regulation (EC) No. 805/2004.

[284] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 20.

[285] Art. 19 EOP.

[286] Regulation (EU) 1215/2012, Art. 36 Para. 1 and Art. 39.

[287] Art. 1 EOP.

Thirdly, threshold for small claims procedure is various considerably from countries to countries from € 600 to € 8.234.[288] For example, Art. 2 ESCP provides that the value of a claim does not exceed € 2000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interests, expenses and disbursements. Similarly, Art. 2 of the Proposal for a Regulation of the European Parliament and the Council establishing an European small claims procedure also stipulates that the total value of a monetary or non-monetary claim excluding interest, expenses, and outlays does not exceed € 2000 at the time the procedure is commenced.[289] However, according to the Regulation (EU) 2015/2421, the ceiling as regards the value of a claim was increased to € 5000 with the purpose of improving access to an effective and cost-efficient judicial remedy for cross-border disputes, in particular for SMEs. In addition, enhancement the trust in cross-border transactions and contribution to the fullest use of the opportunities afforded by the internal market may achieved by increasing access to justice are also other goals.[290]

Finally, the enforcement procedure of small claims is swift and simple in comparison to the normal judgments, or at least be treated equally with enforcement procedures in the internal law of enforcement. For instance, a European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.[291] Or any judgment given in the European small claims procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.[292] Interestingly, COM (2005) 87 final of the Commission of the European Communities addressed that the judgment shall be immediately enforceable, notwithstanding any possible appeal. It shall not be necessary to provide a security.[293] Furthermore, this Regulation also provides that a judgment delivered in a Member State in a European small claims procedure shall be recognized and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if it has been certified by the court or tribunal in the Member State of origin.[294] Besides, many judgments were enforced under the simplified procedures according to the Regulation (EU) 2015/2421 as increasing the ceiling of a small claim to € 5000.

[288] *The Commission of the European Communities*: Green Paper on a European order for Payment Procedure and on Measures to Simplify and Speed up Small Claims Litigation, Brussels, 20.12.2002 COM (2002) 746 final, p. 62.

[289] Brussels, 15.03.2005, COM (2005) 87 Final.

[290] Regulation (EU) 2015/2421, Preamble No. (4) and Art. 1 Para. 1.

[291] EOP, Art. 21 Para. 1.

[292] ESCP, Art. 21 Para. 1.

[293] Art. 13.

[294] Art. 18 Para. 1.

b) Enforcement of small claims in Vietnam

Until now, there have not been special procedures for executing small claims (both domestic small claims and foreign small claims) in Vietnam, therefore, the enforcement procedures for small value judgments analyzed above and below of the international practices are completely new to Vietnam. Although, the CPC 2015 sets out a number of provisions on resolution of civil lawsuits according to simplified procedures (Art. 316 to Art. 324), in which simplified procedures are procedures that are applied to resolve civil lawsuits in simpler procedures than common civil lawsuit resolution procedures to resolve the cases quickly but still ensure the compliance with the law.[295] Normally, when three of the following conditions are satisfied, the court shall resolve a case, according to simplified procedure:[296] (1) The case has simple details, clear legal relationship and the involved parties have admitted their obligations; materials and evidences are sufficient, ensuring the sufficiency of the grounds for the resolution of the case and the court does not have to collect materials/evidences; (2) Addresses of residence and headquarters of all of the involved parties are determined; (3) None of the involved parties reside overseas and there are no properties being in dispute are in foreign countries, unless the involved parties residing overseas and the one residing in Vietnam have reached agreements to request the courts to resolve the cases, according to simplified procedures or the involved parties have presented evidences about the legitimate right to ownership towards the properties and have reached agreements about the handling of the properties.

The problem may arise relating to enforcement procedure is that both the CPC 2015 and the LECJ have not had any provisions on the enforcement of judgments issued under the simplified procedures. As a result, the court decisions or judgments have been rendered according to the simplified procedures, but must be enforced as normal judgments, timeframes for enforcement procedures therefore are unnecessarily prolonged in some circumstances.[297] First example, on 12 December 2017, the Bureau of Civil Judgment Enforcement of PX district rendered an enforcement decision No. 66/QD-CCTHADS returning to Mr. Vu Huu V 04 screws of 17 type, 3.5 cm long; 04 screws of 14 type, 3.5 cm long; and a 30 cm long screwdriver. Second example, on 17 August 2018, the Bureau of Civil Judgment Enforcement of PX district rendered an enforcement decision No. 374/QD-CCTHADS returning to Mr. Than Van T 02 black plastic car keys. This judgment

[295] Art. 316 Para. 1.

[296] The CPC 2015, Art. 317 Para. 1.

[297] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 72, p. 403-404; *Hoang, Thi Thanh Hoa*, in which cases do enforcers shall work out plans on conducting coercive judgment? http://thads.moj.gov.vn/hanoi/noidung/tintuc/lists/nghiencuutraodoi/view_detail.aspx?itemid=26.

was rendered in July 2016, but after two years (August 2018), it had been delivered to the CJE agency. This transfer was made too slowly by the court, because under the enforcement law, within 30 days after the judgment (relating to the refunding of money and assets to involved parties) take legal effect, courts that make decisions must deliver them to competent CJE agencies.[298] The value of the enforcement assets in these judgments was stremely small, specially, the value of each key by the time of 2016 was about VND 2000 (≈ 8-euro cent coin = € 0,08) and at the time of delivering (August 2018), the old key was no longer valid. Although the asset was almost no value, the executor still must carry out all procedures for returning the property as prescribed by law. In fact, this procedure was both heavy state budget and time consuming.

It is clear from the above examples that the assets involved judgment enforcement are just some screws or car keys, almost unworthy stuffs, but the timelines for enforcement procedures lasted several months, even several years. According to the LECJ, procedures for the return of small items, e.g., old knives, clothing, screws, etc., or other assets of greater value to the involved parties are carried out with the same procedure - the normal procedural processes which have been implemented by the civil judgment enforcement agencies. The provision of a common procedure for returning of these assets causes several problems in practice, in many cases, the return of the amount under VND 100,000 to the party is the same as the procedure of returning the amount of over VND 1,000,000,000 which must be done by the executor with the same procedure - normal procedure as prescribed by law.[299] For example, Art. 126 of the LECJ provides the return of seized money and assets to involved parties as follows:

"1. Heads of CJE agencies shall issue decisions on the return of seized money an asset in cases it is pronounced under judgments or rulings that assets must be returned to involved parties. In case parties are returned sums of money and assets already seized and concurrently obliged to pay money but fail to voluntarily execute judgments, enforcers shall handle these sums of money and assets for judgment enforcement. 2. After decisions on the return of seized money and assets are issued, enforcers shall notify the involved parties of the time and place for receiving back money and assets. Past 15 days after the date of notification, if involved parties do not come to receive back sums of money, enforcer shall deposit these sums of money as demand savings at banks and notify involved parties thereof. Upon the expiration of 3 months after the date of notification, if involved parties do not come to receive

[298] The LECJ, Art. 36 Para. 2 Sub-para. b, Art. 28 Para. 1, and Art. 2 Para. 1 Sub-para. a, b, c, d, g.

[299] *Hoang, Thi Thanh Hoa*: Return of Seized Property - Some Inadequacies from Practice, http://thads.moj.gov.vn/noidung/tintuc/Lists/TuThucTien/View_Detail.aspx?ItemID=584; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 126, p. 595.

back assets without plausible reasons, enforcer shall handle assets under Art. 98, 99 and 101 of this law and deposits collected sums of money as demand savings at banks and notify involved parties thereof. Upon the expiration of 5 years after judgments or rulings take legal effect, if involved parties do not come to receive sums of money deposited as savings without plausible reasons, CJE agencies shall carry out procedures for remitting them into the state budget".

The above guideline is quite specific guidance on how to handle the money and property is returned to the party that refuse to come. However, the problem is that the time for dealing with property in cases where the involved parties fail to collect is tedious and complicated procedures (5 years after from the date of the judgment or decision has legal effect). This causes enormous difficulties for the execution of the judgment, time consuming and the efforts of the executors. For small value assets, it is proposed to consider and decide on a common solution for this type of property (e.g., the value of assets is less than VND 1,500,000), the court may declare to confiscate into the state budget if it is agreed by the involved parties or to destroy (for assets that are really old, or devalued), or these types of judgments should be enforced by simplifying procedures. Therefore, the court should not be declared to return to the person concerned, especially for the parties is subject to the imprisonment penalty of imprisonment with a long time. The reason is that finding JDs who are prisoners to return the small properties is an arduous, strenuous and challengeable to the executors.[300] These JDs are concurrently prisoners who are executing criminal sentences under the management of criminal judgment-executing agencies of the Ministry of Public Security. One JD has to fulfil two obligations simultaneously (e.g., returning sums of money or assets and serving a prison sentence) by two separate agencies (i.e., civil judgment enforcement agency and criminal judgment enforcement agency). Therefore, the lack of effective coordination mechanism between the CJE agencies and the criminal enforcement agencies has significantly reduced the efficiency and effectiveness of the enforcement of judgments in general. This solution may help reduce the load number of the court's judgments and decisions; save time, human resources and expenses of the State. This current situation of Vietnamese law seems to be incompatible with the requirements of the international common standard, which is for the State to take all the necessary steps to enable bailiffs to carry out the task they have been assigned, particularly by ensuring the effective participation of other authorities that may assist enforcement

[300] *Hoang, Thi Thanh Hoa*: Returning Money, Property and Papers to the JDs as Prisoners, http://thads.moj.gov.vn/noidung/tintuc/Lists/NghienCuuTraoDoi/View_Detail.aspx?ItemID=857; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 126, p. 593-595.

where the circumstances so require.[301] Other factor of smooth and prompt enforcement under the international standard that is at the stage of the enforcement of decisions, swift (e.g., e-mail) communication between the court, the enforcement agents and the parties should be possible.[302]

In contrast to Vietnam, in Germany, simple enforcement procedures have been fully regulated in the Civil Procedure Code (§ 829a ZPO). The creditor must provide a letter in addition to his electronically filed application for compulsory enforcement, not to submit any further written, provided that the monetary claims not exceeding € 5,000 (§ 829a (1) No. 1 ZPO).[303] There are no stipulations requiring the submission of any records other than the executed copy of the writ of execution (§ 829a (1) No. 2 ZPO). The creditor attaches to his petition, as an electronic document, a copy of the writ of execution along with a certificate of services, an electronic signature is not required (§ 829a (1) No. 3 ZPO),[304] and the creditor assures that he has at hand an executed copy of the writ of execution and a certificate of service and the claim continues to exist in the amount set out in the petition for enforcement (§ 829a (1) No. 4 ZPO).[305] Concerning the application of security measures, a judgment in which low-value dispute (including dispute valued at up to € 1250 or enforceability regarding to the cost up to € 1500), it is not necessary to take security measures.[306]

In addition, making provision for a simplified procedure, § 495a ZPO stipulates that

"The court may decide at its equitably exercised discretion on how to implement its proceedings if the value of the claim does not exceed the amount of € 600. Upon corresponding application being made, the matter must be dealt with in oral argument".

This article provides the threshold for small claims is € 600 or less than € 600 and the court may decide how to proceed at its reasonable discretion and make use of certain specific ways of simplifying the procedure. Therefore, the parties only request an oral hearing, which is one of the simplified procedures. If the value of the dispute does not exceed € 600, below the appeal level, the parties can quickly receive the judgment under simplified procedures and the fairness of the court.[307] In contrast, Vietnamese law is not based on the value of the dispute, but sets out several

[301] *The Scientific Council of the UIHJ*, GCE, 2016, p. 167; the case of Pini and Bertani and Manera and Atripaldi v. Romania (Applications No. 78028/01 and 78030/01).

[302] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 66.

[303] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 483.

[304] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, §829a, Rn. 2, p. 1008.

[305] *Thomas/Putzo*: Zivilprozessordnung, 39. Aufl. 2018, Rn. 2, p. 1222.

[306] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 708, Rn. 24, p. 65.

[307] *Braun, Johann*: Lehrbuch des Zivilprozeßrechts, 2014, p. 1108.

conditions to resolve the dispute. These conditions are based on the nature of the dispute (as analyzed above).

In Germany, for small claims where the value in dispute is not over € 600, the structure of the judgment is simpler than for ordinary proceedings and generally it cannot be appealed. Under the requirements of international legal relations, the grounds of the judgment must be stated if the judgment is expected to be enforced abroad (§ 313 (4), (5) ZPO). To the contrary, in Vietnam, first-instance judgments/decisions of the courts made according to simplified procedures can be appealed against according to appellate procedures to request the first-instance courts to re-settle the cases according to the appellate simplified procedures. However, judgments/decisions made according to simplified procedures can be appealed against according to cassation/reopening procedures as normal cases. The provisions on adjudication of civil lawsuits under simplified procedures are only recently introduced into the CPC 2015 and applied from the date when the CPC 2015 took effect from 01 July 2016, some provisions of this Code took effect from 01 January 2017.

Unfortunately, until now, the simple CJE procedures for low-value judgments has not been regulated in the Vietnamese civil judgment enforcement law. Therefore, these regulations of the Federal Republic of Germany are completely new to Vietnam and are invaluable experiences contributing to the improvement of Vietnamese law in the coming time. From the experience of the Federal Republic of Germany and international standards, Vietnamese Parliament and Government should supplement the regulations on simplified procedures relating to the enforcement of judgments and decisions which had previously been resolved by the court according to simplified procedures.

c) The legal provisions of Vietnam on recognition and enforcement of foreign small claims in comparison to the international standards

It can be affirmed that up to the present, Vietnam has no separate regulations on the recognition and enforcement of foreign small value claims under simplified procedures or summary proceedings. Therefore, the recognition and enforcement of foreign courts' civil judgments or decisions which have small values shall comply with the general provisions under the ordinary procedures of the CPC 2015. The procedures for recognition and enforcement in Vietnam or non-recognition of civil judgments or decisions of foreign courts are provided in part seven (Art. 423 to Art. 450) of the CPC 2015; the procedures for recognition and enforcement of foreign arbitral award are provided in the part seven (Art. 451 to Art. 463) of the CPC 2015. These are new provisions of the CPC 2015 just coming into effect since 01 July 2016. However, there are major limitations, practical obstacles and some

inadequacies compared with the general standards of the international laws and practices. Here are some convincing arguments:

Firstly, Vietnamese law still stipulates "recognition" as a compulsory procedure before the judgment or decision of a foreign court is enforced in Vietnam. For example, Art. 423 of the CPC 2015 makes a list the foreign courts' civil judgments or decisions which shall be recognized and enforced in Vietnam, e.g., civil, marriage, family, trade, business, labor - related judgments/decisions, decisions on properties in criminal/administrative judgments/decisions of courts of a foreign country are provided for an international treaty to which both Vietnam and such country are signatories, etc. The procedure for recognizing foreign courts' civil judgments/decisions is carried out by the Vietnam's Ministry of Justice and a competent Vietnam's Court.[308] Meanwhile, the enforcement procedures of foreign courts' civil judgments/decisions are enforced by the CJE agencies.[309] The Vietnamese law contains two steps, including the recognition procedure and the enforcement procedure, which is intricate, outdated, and unsuitable compared to international standards.[310] In this regard, international law as well as the civil procedural law of the German Federal Republic has greatly progressed in comparison with the Vietnamese legal regulations. For instance, Art. 39 of the Brussels Ibis Regulation stipulates that

"A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required".

This provision is more developed than the previous similar provision in the Council Regulation (EC) No. 44/2001, which is:

"A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required".[311]

European legislation continues to be improved which is shown in the three important Regulations of the European Parliament and the Council of EU through a new provision called "*Abolition of Exequatur*". Specifically, the content of the provision "Abolition of Exequatur" in both Regulation (EC) No 805/2004 and EOP state that

"A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States

[308] The CPC 2015, Art. 432.

[309] The LECJ, Art. 2 Para. 1 Sub-para. d.

[310] *Banh, Quoc Tuan*: Improving Provisions on Recognition and Enforcement of Foreign Courts' Civil Judgments and Decisions in Vietnam, PhD. Dissertation, 2015, p. 79, 90-95.

[311] Art. 33 Para. 1.

without the need for a declaration of enforceability and without any possibility of opposing its recognition".[312]

In accordance with the prohibition of *a revision au fond* which is a principle stipulated in the European laws, foreign judgments are enforceable declared in Germany without a review being performed of the decision's legality (§ 723 (1) ZPO).[313] Furthermore, an exequatur is therefore no longer necessary.[314] Especially, relating to the recognition and enforcement small claims in another member states, ESCP provides that

"A judgment given in a Member State in the European Small Claims Procedure shall be recognized and enforced in other Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition".[315]

In accordance with the requirements of the international regulations stipulated in the Regulation (EC) No 805/2004, EOP, §§ 1082, 1093 and 1107 ZPO provide that foreign enforcement titles shall be pursued in Germany based on enforcement title issued in a Member State of EU pursuant to Council Regulations (Regulation (EC) No 805/2004, EOP, and ESCP) without requiring a court certificate of enforceability. In Germany, the enforcement of a European small claim under the ESCP is provided in §§ 1105 to 1109 ZPO. In accordance with the requirements of the international regulations, ZPO provides simple enforcement procedures for small claims, which are issued under the ESCP. For instance, in Germany, judgments are to be declared provisionally enforceable without the provision of security.[316] In conjunction with Art. 23 of the ESCP, the decision shall be delivered by a preliminary order, which is incontestable.[317] To meet the requirement of the point 30 of the ESCP, ZPO states that compulsory enforcement shall be pursued in Germany based on an enforcement title issued in a Member State of EU pursuant to the ESCP without requiring a court certificate of enforceability.[318] Especially, in accordance with the requirement of the ESCP, which is "In order to speed up the recovery of small claims, the judgment should be enforceable notwithstanding any possible appeal",[319] the enforcement of a

[312] *The European Parliament and of the Council*: Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested Claims, Art. 5 has the same content with the Art. 19 of the Regulation (EC) 1896/2006.

[313] *Fuchs/Hau/Thorn*: Fälle zum Internationalen Privatrecht, 5. Aufl. 2019, p. 106.

[314] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 21, p. 1722 and Rn. 1, p. 1761.

[315] Art. 20 Para. 1.

[316] § 1105 (1) S. 1 ZPO.

[317] § 1105 (2) S. 2 ZPO.

[318] § 1107 ZPO.

[319] Point 25.

small claim issued under the ESCP generally cannot be appealed according to § 313a ZPO.

From the invaluable experience of the German Federal Republic and the requirements of international law, Vietnam should supplement the regulations on simplified procedures when implementing foreign courts' civil judgments/decisions, which have small value. At the same time, abolition of recognition procedures in some obvious and simple cases or simplify the recognition procedures in order to shorten the time of execution of foreign courts' civil judgments/decisions which shall be enforced in Vietnam.

Secondly, there have been conflicts between the provisions on the right to apply for recognition and enforcement or non-recognition of civil judgments or decisions of foreign courts. Concerning about the persons who have the right to apply for recognition and enforcement or non-recognition of foreign courts' civil judgments or decisions, Art. 425 Para. 1 of the CPC 2015 of Vietnam stipulates that:

"The JCs or their lawful representatives may file petitions with Vietnamese Courts for recognition and ECJs or decisions of foreign Courts if the JDs being individuals reside or work in Vietnam, or the JDs being agencies or organizations are headquartered in Vietnam or their properties related to the enforcement of the judgments or decisions of foreign Courts exist in Vietnam at the time when the applications are filed".

The content of this article shows that only JCs or their lawful representatives may have the right to apply for recognition and enforcement or non-recognition of civil judgments or decisions of foreign courts. Meanwhile, the LECJ provides that involved parties in the course of enforcement process, including not only the JC but also the JD.[320] In which JC means an individual, agency or organization that enjoys rights and interests in an enforced judgment or ruling.[321] JD means an individual, agency or organization that shall fulfill obligations in an enforced judgment or ruling.[322] The LECJ stipulates that both the JCs and the JDs have the right to self-authorize or authorize another person to request judgment execution (Art. 7 Para. 1 Sub-para. a and h; Art. 7a Para. 1 Sub-para. b).[323] Conflict with the enforcement law, the provisions of the CPC 2015 have inadvertently excluded the right of the JDs, violating the right to request execution of the JDs.

[320] The LECJ, Art. 3 Para. 1.

[321] The LECJ, Art. 3 Para. 2.

[322] The LECJ, Art. 3 Para. 3.

[323] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a, p. 65.

It is undoubtedly that the CPC 2015 could restrict the right to apply for recognition and enforcement or non-recognition of civil judgments or decisions of foreign courts. In detail, the JD in some circumstances shall not have right to apply for recognition and enforcement or non-recognition of civil judgments or decisions of foreign courts. In practice, there are civil judgments and decisions of foreign courts in which it is impossible to determine who is JC and who is JD. In the cases of divorce judgments of a foreign court only declared the parties to get divorced without resolving disputes over property and common children. When processing the request for recognition and enforcement in Vietnam of such foreign courts' judgments or decisions, Vietnamese courts are often confused when determining who are the JCs in order to determine the jurisdiction of the Court.[324] As a result, some divorce judgments of foreign courts have not been recognized and enforced in Vietnam, adversely affecting on the right and benefit of the involved parties.

Apparently, provision on the right to apply for recognition and enforcement of foreign courts' civil judgments and decisions in Vietnam is inconsistent with the common principles of the international laws. For instance, the Hague Convention 1971 provides:

"*The party* seeking recognition or applying for enforcement shall furnish… (Art. 13)".

Art. 26 of the 1968 Brussels Convention and Art. 33 Para. 2 of the Council Regulation (EC) No 44/2001 before using the term which is "*Any interested parties* who raises the recognition of a judgment as the principal issue in a dispute may …". The Brussels Ibis Regulation also uses the "involved parties" term in a broad sense, e.g., *"Any interested party may*, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45".[325]

Or ESCP provides that:

"*At the request of one of the parties*, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost."[326]

In accordance with the international practice and protect the right and benefit of the involved parties, in coming time, the CPC 2015 should revise regulations on the

[324] *Banh, Quoc Tuan*: Improving Provisions on Recognition and Enforcement of Foreign Courts' Civil Judgments and Decisions in Vietnam, PhD. Dissertation, 2015, p. 85-86; *Nguyen, Thi Thuy Dung*: Some major limitations on the procedure for recognition and enforcement of foreign courts' civil judgments and decisions in Vietnam, http://www.tand.hochiminhcity.gov.vn/web/guest/118?p_p_id.

[325] Art. 36 Para. 2.

[326] Art. 20 Para. 2.

right to apply for recognition and enforcement of foreign courts' civil judgments and decisions in Vietnam. Whereby, not only the JC, but also the JD has the right to apply for recognition and enforcement of foreign courts' civil judgments and decisions in Vietnam.

Finally, provisions on conditions of residence in Vietnam or property of enforcement in Vietnam at the time of applying for recognition and enforcement of foreign courts' civil judgments and decisions in Vietnam. Art. 425 Para. 1 of the CPC 2015 defines as follows:

"The JCs or their lawful representatives may file petitions with Vietnamese Courts for recognition and ECJs or decisions of foreign Courts *if the JDs being individuals reside or work in Vietnam, or the JDs being agencies or organizations are headquartered in Vietnam or their properties related to the enforcement of the judgments or decisions of foreign Courts exist in Vietnam at the time when the applications are filed*".

This regulation means "At the time of the request, the JDs are residing or working in Vietnam, the JDs being agencies or organizations are headquartered in Vietnam or their properties related to the enforcement of the judgments or decisions of foreign Courts are being existed in Vietnam".

Therefore, without conditions just mentioned above, their petitions for recognition and enforcement shall not be recognized and enforced in Vietnam. For many years, a great deal of civil judgments of foreign courts has not been recognized and enforced in Vietnam because of lacking these conditions. Most of these judgments were divorce cases of Vietnamese citizens who have been living and working in Germany, Russia, Ukraine, America, Taiwan, Korea, Japan and Australia. Among these countries, many countries have not signed mutual legal assistance agreement with Vietnam, e.g., Germany, America, Taiwan, Korea, Japan, Australia.[327] For example, in May 2009, the People's Court of Ho Chi Minh City suspended the request for recognition and enforcement of a divorce judgment issued by the Wolfenbutter Family Court (Germany) relating to the divorce between Mr. LVN and Mrs. TTN. The reason for non-recognition and enforcement of this divorce judgment was that at the time of filing the petition, Mrs. TTN was living in Germany and had no property in Vietnam.[328] In order to solve the above problems, the Vietnamese law should revise the conditions for recognition and enforcement of foreign judgments/decisions in Vietnam. Simultaneously, Vietnamese Government should joint international

[327] *Banh, Quoc Tuan*: Improving Provisions on Recognition and Enforcement of Foreign Courts' Civil Judgments and Decisions in Vietnam, PhD. Dissertation, 2015, p. 110.

[328] *Banh, Quoc Tuan*: Improving Provisions on Recognition and Enforcement of Foreign Courts' Civil Judgments and Decisions in Vietnam, PhD. Dissertation, 2015, p. 81.

Conventions on the recognition and ECJs and decisions of foreign courts, e.g., the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and commercial Matters,[329] The Hague Convention of 30 June 2005 on Choice of Court Agreements,[330] or UN Convention on International Settlement Agreements Resulting from Mediation.[331] In addition, Vietnam should sign more several mutual legal assistance agreements with other countries where many Vietnamese live, e.g., Germany, America, Japan, Austria, Korea or Taiwan.[332]

VI. Costs of enforcement are fixed, predictable, transparent and reasonable

1. International regulations on the enforcement fees and the enforcement costs

Enforcement fees may be crucial elements decisively affecting on the efficiency as well as the speed and effectiveness of the enforcement proceeding.[333] Article 5 of the GCE regulates that debtors are the persons who have responsibility for paying the costs of enforcement, but the creditor must pay them in advance, except other cases provided for by the law, e.g., the payment of maintenance. In the event of the insolvency of the debtor, the costs are borne by the creditor if he is insolvent. If the creditor has abused this power to seek enforcement, he may direct the creditor to pay the costs of enforcement and to compensate the loss sustained by the debtor under the judge's decision. The costs of enforcement should be fixed, predictable, transparent and reasonable. All creditors have equal access to enforcement measures by providing legal support, according to the domestic law.

The ALI/Unidroit Principles of transnational civil procedure define cost as follows: "Costs" include court filing fees, fees paid to officials e.g., court stenographers, expenses e.g., expert-witness fees, and lawyers' fees.[334] Under the other international requirements, costs of enforcement should be generally borne by the defendant.[335] Notwithstanding the possibility that costs may be borne by other parties if they abuse the process.[336] Costs of enforcement must be paid by the persons

[329] https://assets.hcch.net/docs/bacf7323-9337-48df-9b9a-ef33e62b43be.pdf.

[330] https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf. Germany has ratified this Convention which came into force from 2015.

[331] https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf.

[332] *Le Hong*: It is not easy to recognize and enforce civil judgments and decisions of foreign courts in Vietnam, http://baophapluat.vn/tu-phap/khong-de-de-cong-nhan-va-thi-hanh-ban-an-quyet-dinh-dan-su-cua-toa-an-nuoc-ngoai-365544.html; *Nguyen, Van Nghia*: Ensuring Human Right in Judgment Execution, Democracy and Law Journal 2006, p. 193.

[333] *Van Rhee C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 98.

[334] Art. 25 Para. 25.1.

[335] *Fariello, Frank/Boisson de Chazourmes, Laurence/E. Davis, Kevin*: The World Bank Legal Review, Vol. 7, p. 250.

[336] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.5.

or the bodies or by the enforcement agent who is responsible for the wrongful or an irregular act.[337] It must be borne by the debtor with the costs of the compulsory distraint or by the creditor if costs incurred for recovery without an executory clause.[338] The European Parliament and the Council of EU also states that "The unsuccessful party should bear the costs of the proceedings".[339]

In this area, to comply with international standards, the experience from the Federal Republic of Germany indicates that the defendant is the loser as stipulated by the enforcement law called JD, who must bear the costs of enforcement.[340] All costs, including court fees, costs for witnesses and expert witnesses, and the opponent's necessary expenses, comprising his attorney's fees must be paid for by the losing party.[341] That is the justice and the equality, because the JDs are persons who cause the legal disputes which incur the enforcement's costs.[342] Therefore, § 788 ZPO explains the reasons why the JDs must pay for the enforcement costs.[343] The costs of proceedings may be borne by the JCs in part or in entirety, depending on the special reasons given in the creditor's conduct, or the attitude of the JD, e.g., when the plaintiff has filed the action without due warning and the defendant has immediately acknowledged the claim.[344]

Enforcement fees should be borne by defendants if they are solvent persons, together with the possibility of a performance fee borne by the claimant. In the insolvent cases, the claimant should be responsible for the enforcement fees.[345]

Fees, as well as costs are the key factors affecting on the efficiency of the enforcement proceedings so the international laws require that first and foremost the enforcement fees and the enforcement costs must be determined by law.[346] In addition, *laws on enforcement of fees and costs in the member states should be simple, clear and concise*.[347] Information about the enforcement fees and costs should be transparent not only on the national scale, but also beyond the mere domestic lever, rates must be disclosed by means of a website or via the official

[337] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 57, 61.

[338] The Uniform Act, Art. 47.

[339] ESCP, Point 29.

[340] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 788, Rn. 2, p. 362.

[341] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 493.

[342] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1697-1698, p. 826; *Dierck/Morvilius/Vollkommer*: Handbuch Zwangsvollstreckungsrecht, 2. Aufl. 2016, Rn. 261, p. 158.

[343] *Paulus, Christoph G.*: Zivilprozessrecht, Erkenntnisverfahren, Zwangsvollstreckung und Europäisches Zivilprozessrecht, 6. Aufl. 2017, Rn. 758, p. 277.

[344] § 788 (4) ZPO; *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 493.

[345] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 60.

[346] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.3; *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 47.

[347] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 54.

Internet sites of the judicial and professional authorities.[348] There are also several factors relating to the enforcement fees and costs need to take into account, e.g., the amount of debt, any particular urgency, the difficulties that the enforcement agent is likely to encounter or legal aid especially with the claimants who are unable to pay enforcement fees.[349] In the world, there is a usual rule that permits the winner in a suit to recover his attorney fees from the loser (fee shifting), therefore, both these attorney fees or two "modest" costs can add up to one big bill. The question of considering for low- and moderate-income people to ensure that they have access to the civil litigation system which the burning issue in the modern justice is.[350]

2. Vietnamese laws on the enforcement fees and costs

a) Vietnamese laws on the enforcement fees

The LECJ regulates that JCs are the persons who have responsibility for paying the fees when receiving money and assets under a judgment or ruling.[351] Unlike the German law on CJE fees where the court receives a court fee, calculated according to the value of the claim and basically the JD is responsible for the enforcement fees, in Vietnam, the enforcement agencies receive enforcement fees, calculated according to the money or value of property received by the JC. The fee rates are stipulated in the Circular No. 216/2016/TT-BTC,[352] Decree No. 120/2016/ND-CP and Decree No. 62/2015/ND-CP.

In Vietnam, the JC shall be exempt from paying the enforcement fee when they receive the money or property, e.g., alimony, compensation for loss of life, health, dignity; salary; redundancy pay, severance pay; social insurance payout, compensation for illegal dismissal or termination of employment contract; etc.[353] The JC might have the enforcement fee reduced, e.g., up to 50% reduction if the JC is facing financial difficulties and such financial difficulties are confirmed by the

[348] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 50, 51.

[349] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 55, 62.

[350] *O. Main, Thomas*: Global Issues in Civil Procedure: Cases and Materials, 2006, p. 19.

[351] The LECJ, Art. 3 Para. 7.

[352] Art. 4: (1) 3% of the money or value of property received if it is exceeding twice the base salary specified by the State but not exceeding VND 5,000,000,000; (2) VND 150,000,000 plus 2% of the money or value of property in excess to VND 5,000,000,000 if the money or value of the property received is exceeding VND 5,000,000,000 but not exceeding VND 7,000,000,000; (3) VND 190,000,000 plus 1% of the money or value of property in excess to VND 7,000,000,000 if the money or value of the property received is exceeding VND 7,000,000,000 but not exceeding VND 10,000,000,000; (4) VND 220,000,000 plus 0.5% of the money or value of property in excess to VND 10,000,000,000 if the money or the value of the property received is exceeding VND 10,000,000,000 but not exceeding VND 15,000,000,000; (5) VND 245,000,000 plus 0.01% of the money or value of property in excess to VND 15,000,000,000 if the money or the value of the property received is exceeding VND 15,000,000,000.

(At the time of writing the present paper, USD 1 ≈ VND 23,000 and VND 5,000,000,000 ≈ USD 217,000).

[353] Circular No. 216/2016/TT-BTC, Art. 6.

People's Committees of the commune where he/she resides or by his/her employer; etc.[354]

It is clear that with respect to the fee payer, regulations on enforcement fees of Vietnam is significantly different in comparison with the international standards.[355] Under the Vietnamese laws, enforcement fees are paid mainly by the JC, except in a few cases from the state budget while under the international requirement, enforcement fees should be borne by the defendants or debtors if they are solvent persons together with the possibility of a performance fee borne by the claimant.[356] One of the most critical controversy about the enforcement fees in Vietnam is that the person liable to pay the judgment execution fee is the person who is the holder of an enforceable title/the JC. Meanwhile, the JCs are the persons who were not the fault led to lawsuits and liability resulting charges, including civil enforcement charges. This is totally contrary to international rules on fee payers for CJE.[357] Another interesting point under the international laws is that in the insolvent cases, the claimant should be responsible for the enforcement fees, meanwhile, there are no similar regulations in the system of the Vietnamese laws.[358]

b) Vietnamese laws on the enforcement costs

In Vietnam, the enforcement costs are prescribed in the LECJ, Decree No. 62/2015/ND-CP and Circular No. 200/2016/TT-BTC. Art. 3 Para. 8 of the LECJ regulates that expenses (or costs) for coercive judgment enforcement means expenses for organizing coercive enforcement to be borne by the JD, unless it is prescribed by law that these expenses shall be paid by the JC or covered by the state budget. It means that not only the JD but also the JC or the state budget is the person or organization who has responsibility for paying the enforcement costs. Legal provisions on enforcement costs of Vietnam focuses more on the costs of organizing coercive enforcement rather than the normal enforcement costs. One of the main reasons may be that, with respect to the timeline for enforcement, there are two time periods in the course of the enforcement, including time limit for voluntary execution of judgments (the time limit for voluntary execution of a judgment is 10 days after the JD receives or is properly notified of, the judgment enforcement decision) and

[354] Circular No. 216/2016/TT-BTC, Art. 7 Para. 2.

[355] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Law on Enforcement Fees in Vietnam and some related international regulations, http://thads.moj.gov.vn/noidung/tintuc/Lists/NghienCuuTraoDoi/View_Detail.aspx?ItemID=843.

[356] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 60.

[357] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*, Law on Enforcement Fees in Vietnam and some related international regulations, http://thads.moj.gov.vn/noidung/tintuc/Lists/NghienCuuTraoDoi/View_Detail.aspx?ItemID=843; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 60, p. 347-349.

[358] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 60.

immediately thereafter is the period of coercive enforcement of judgments.[359] In case of necessity to prevent JDs from dispersing or destroying assets or otherwise shirking the judgment enforcement, enforcers may promptly apply measures to secure judgment enforcement.[360] Upon the expiration of the time limit for voluntary execution of judgments, JDs with judgment execution conditions who fail to voluntarily execute judgments shall be coerced to do so.[361] The LECJ does not have specific regulations on the starting time of coercive measures after the expiration of the time for voluntary execution, if the JDs have conditions to execute the judgments but he/she fails to enforce. In fact, the time for enforcement of some judgments have been prolonged unnecessarily or without application of security measures or coercive measures to enforce the judgments. Therefore, it is necessary to supplement the time limit for issuing decisions on enforcement of judgment after the deadline for the voluntary execution of a judgment. This is also one of the major limitations of the current CJE law in Vietnam.[362]

Under the enforcement law, six coercive judgment enforcement measures may be applied after the voluntary time has elapsed, including deduction of money on accounts; recovery and handling of money and valuable papers of JDs; subtractions of incomes of JDs; distraint and handling of assets of JDs, including also those held by third parties; exploitation of assets of JDs; forcible transfer of objects, property rights and papers; and forcible performance or non-performance of certain jobs by JDs.[363]

Overall, enforcement law of Vietnam regulates that the costs of coercive enforcement are borne by the JDs, the JCs, the state budget and other organizations or individuals.

Specifically, the JDs must pay for the notification expenses, unless it is prescribed by law that these expenses are covered by the state budget or paid by JCs (Art. 39 Para. 4); asset preservation remuneration and expenses shall be borne by the JD, unless otherwise provided for by law (Art. 58 Para. 3); bear the expenses for coercive judgment enforcement, e.g., expenses for notification of the coercive enforcement judgment; expense for the purchase of materials and fuel, hiring of protection, medical and fire and explosion prevention and fight means and equipment, and other means and equipment necessary for judgment enforcement; (Art. 73 Para. 1); etc.; in

[359] The LECJ, Art. 45 Para. 1.

[360] The LECJ, Art. 45.

[361] The LECJ, Art. 46 Para. 1.

[362] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 46, p. 271.

[363] The LECJ, Art. 71.

case jobs must be performed by JDs themselves, request competent agencies to examine JDs, penal liability for the crime of failure to execute judgments (Art. 118).

In exceptional cases, according to the LECJ, the costs of coercive enforcement are borne by the state budget (Art. 73 Para. 3, Art. 124 Para. 1 S. 3, Art. 133) or paid by JCs (Art. 73 Para 2 Sub-para. a, b and Art. 129 Para. 2) or paid by the other people (Art. 113 Para. 1, Sub-para. c; Art. 108 Para. 1, 2; Art. 117 Para. 2 Sub-para. a and Art. 133 Para. 1).

Currently, regulations on judgment execution costs in Vietnam still have problems that need further study. There is no mechanism for collecting or handling the costs of enforcing the judgment that the executor had paid in advance to enforce the judgment, but then the JD did not pay intentionally even if he had condition to pay this amount. Unfortunately, there are no sanctions to solve these cases, especially in case of enforcing judgment for a third person.[364] The scope of subjects to be enforced under the CJE law is stipulated in a narrow sense and not yet covering all types of objects to be executed is the first reason.[365] Therefore, the enforcement law has not specified the enforcement procedures for these expenses is the second one. Differently, under the Art. 4 Para. 1 Regulation (EC) No. 805/2004, the concept of "judgment" is understood in a broad sense, including any judgment given by a court or tribunal of a member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

From the above obvious facts about the enforcement costs, it can be concluded that the variety of enforcement costs may a financial burden for the JDs, even affecting on the accessibility to the justice of the parties involved. For example, based on the results of verification of judgment execution conditions, heads of CJE agencies shall issue decisions on lacking of judgment execution conditions if the JD has assets, but the value of which is sufficient only for paying costs of judgment enforcement.[366] In case of high-cost enforcement, this situation may affect the right for accessing to the justice of the JC if the judgment cannot be enforced. Therefore, it is true that the litigation cost, which has a strong impact on "access to justice" in the course of enforcement proceedings.[367] The height of enforcement costs may lead to return of written requests for judgment enforcement if the JD has assets, but the value of which is efficient only for paying costs of coercive judgment enforcement.[368] As a

[364] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 73, p. 410.

[365] See A. Chapter 1. IV. 2.

[366] The LECJ, Art. 44a Para. 1 Sub-para. a.

[367] *Qing-Yun Jiang*: Court Delay and Law Enforcement in China, 2006, p. 2.

[368] The LECJ, Art. 51 Para. 1 Sub-para. a.

result, the judgment is unenforceable and the property rights of the JC cannot be protected.

In Vietnam, both the enforcement fees and the enforcement costs, especially the fees' rates and the costs' rates are prescribed mainly by decrees, circulars and they have not been fully and regularly updated via the official internet sites of the judicial or professional authorities. In accordance with the requirement of the international law, the legal provisions on enforcement fees and costs and its rates should be made available to the parties via the official Internet sites of the CJE agencies or other competent state authorities.[369] In Germany, the enforcement costs are transparent and fixed. Bailiffs only charge the costs stipulated in the GvKostG. The texts of the laws relating to costs can be obtained from the bookshops or are available in their latest versions, free of charge, or on the Internet. The latest versions of laws relating to costs are accessible from the official website of the Federal Ministry of Justice or from the website http://www.gesetze-im-internet.de/. A set fee is prescribed for each individual activity carried out by the bailiff in the GvKostG.[370] The cost rates are described by § 20 GvKostG with the detailed costing schedule, including seven different types of the enforcement costs.

Another obstacle relating to the enforcement costs in Vietnam is the lack of the regulations on the liability of the enforcement agents for paying the enforcement costs if they have the wrongful or irregular act in the course of enforcement procedures. Furthermore, currently, civil judgment execution fees and costs in Vietnam are mainly prescribed by circulars or decrees - documents have a lower legal effect than law. While, the global standard states that the cost of the enforcement process is an important element so it should be guaranteed access by means of a mechanism of legal support, e.g., by law. The involved parties should be protected to ensure that they will pay only the enforcement costs determined by law. Therefore, to ensure stability, consistency, and conformity with international standards, rules on enforcement fees and costs of Vietnam should be specified in a law with a higher legal effect.[371]

Enforcement cost is one of the factors influencing the efficiency of the judgment enforcement as well as the fundamental right. In Vietnam, the cost of coercion depends on a variety of factors, e.g., the number of coercion participants, the amount

[369] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*, Law on Enforcement Fees in Vietnam and some related international regulations, http://thads.moj.gov.vn/noidung/tintuc/Lists/NghienCuuTraoDoi/View_Detail.aspx?ItemID=843.

[370] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 704, Rn. 42, p. 42.

[371] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Law on Enforcement Fees in Vietnam and some related international regulations, http://thads.moj.gov.vn/noidung/tintuc/Lists/NghienCuuTraoDoi/View_Detail.aspx?ItemID=843.

of compensation paid to coercion practitioners, the time of coercion, the enforcement measures, and etc. Basically, coercive enforcement costs to be borne by the JDs (Art. 3 Para. 8 of the LECJ). According to the LECJ, there are six measures to coerce judgment enforcement (Art. 71). During eight years (1 October 2008 to 30 September 2016), the ECJs on the national scale had issued 4208 coercive decisions on the deduction of money on accounts; 1355 coercive decisions on recovery and handling of money of the JDs; 122 coercive decisions on recovery and handling of valuable papers of JDs; 3746 coercive decisions on subtraction of incomes of JDs; 55690 coercive decisions on distraint and handling of assets of JDs, including also held by third parties; 131 coercive decisions exploitation of assets of JDs; 367 coercive decisions on forcible transfer of objects; 4295 coercive decisions on forcible transfer property rights; 220 coercive decisions on forcible transfer papers; 864 coercive decisions on forcible performance of certain jobs by JDs; and 395 coercive decisions on forcible non-performance of certain jobs by JDs.[372] With the total of 71262 coercive decisions on ECJs were issued as mentioned above, along with it a large number of enforcement costs or expensive were mainly paid by the JDs and/or the state budget. Therefore, the lower the cost of enforcing civil judgments, the higher the enforcement effect. The greater the cost of coercive civil enforcement, the less effective the enforcement of enforcement, even failure to enforce specific cases. For example, if the cost of enforcing a judgment is high, the JDs have assets, but these assets only enough to pay for coercive judgment execution, therefore the judgment is considered as not enough having conditions for execution. Adversely affect the rights and interests of the JC (Art. 44a Para. 1 Sub-para. a of the LECJ). Therefore, for the purpose of enforcement effectively, the cost of enforcing civil judgments must be reasonable and must be used for the right purpose. At present, in Vietnam, lower level of expenses for judgment execution and improper advance payment of forcible enforcement costs have an adverse effect on the effectiveness of the enforcement affairs.[373]

VII. The service of notices as well as the service of documents should be effective, contained the basic duty of the parties involved and application of information technologies

1. International standards for the notice of enforcement

Under the Art. 8 of the GCE, every enforcement measure must on pain of nullity be preceded by the service or notification of the enforceable title on the debtor in

[372] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 105-107.

[373] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 48-49, 78.

accordance with the procedures provided for by national law. Every act of enforcement must be brought to the attention of the debtor.

First and foremost, the effective and appropriate means of serving documents together with precise information about the debtor is one of the most important factors in the course of enforcement. Personal service by enforcement agents, electronic means or posts should be used aiming at serving documents.[374]

Secondly, notices to the parties concerning the enforcement is not only an essential aspect of the enforcement law, but also a necessary element of a fair trial.[375] Notice of enforcement plays an pivotal role in the enforcement of money judgments in England, e.g., before gaining 'control', the enforcement agent must give the debtor 'notice'.[376]

Another international requirement is that the member states should draw up standard documents relating to the different stages in the enforcement process for the purposes of (1) notifying the defendants of the consequences of enforcement, e.g., the cost of enforcement and of the costs of a failure to comply with a decision ordering them to pay; (2) notifying the defendants of the enforcement measures to be taken against them; (3) keeping the claimants fully informed of the stages reached by the enforcement procedure; and (4) notifying the third parties to ensure their rights, relevant obligations and the consequences of a failure to comply.[377]

Furthermore, notification in all cases should contain two relatively contents, including the advantages and disadvantages of a binding or not a binding on the court order. In addition, enforcement agents should have full competence in providing services of notices with a secure method for the service of documents and to ensure that the parties are served with adequate notice in a timely manner. Moreover, notice of enforcement should be spread widely to the broadest possible public with the conditions of safeguarding the defendant's privacy in case the defendant's assets are to be sold at a public auction.[378] For example, in Germany, the internet auction through the online judicial auction platform (www.justiz-auktion.de) has established which has become *de facto* a nationwide platform (§ 814 ZPO).[379] Another aspect of the notice of enforcement is to guarantee the rights of defense of the debtor. The preservation order and the copies of all the documents supplied by the creditor

[374] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.d.

[375] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 17.

[376] *Stürner/Kawano*: Comparative Studies on Enforcement and Provisional Measures, 2011, p. 16.

[377] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 18.

[378] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 19-22.

[379] *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 7, p. 189.

should be informed and transferred to the JD rapidly and precisely. The rules of service or notification are set out in detail in the national laws.[380]

In the same fashion, the Uniform Act specifies that any person who, on the occasion of a measure to ensure the execution or protection of a claim, should be notified of all the documents related to the judgment enforcement.[381] Or according to the Art. 102 of this law, in case seizure the debtor's assets for sale, the judicial officer or execution must inform the debtor about the seizure and give him a period of eight days to disclose to the bailiff or process-server the existence of any previous seizure and furnish him with the report thereof. Finally, the new technologies should be commonly used for the purposes of not only keeping informed of the enforcement measure, but also cooperating between enforcement professionals both internally and internationally.[382]

2. Vietnamese enforcement law on enforcement notice and the service of documents

Notification of judgment enforcement is provided in the Art. 39 of the LECJ. Judgment enforcement decisions, notices, summons and other documents related to judgment enforcement must be notified to involved parties and persons with related rights and obligations to exercise their rights and perform their obligations according to the contents of these documents. The notification shall be made within three working days after the issuance of any the above documents unless it is necessary to prevent involved parties from dispersing or destroying assets or shirking the judgment enforcement. Under the enforcement law of Vietnam, there are three forms of notification, including notifying directly to individuals, agencies, or organizations (Art. 40, 41 of LECJ); public notification (Art. 42 of the LECJ); and announcements in the mass media (Art. 43 of the LECJ).[383] Notification costs shall be borne by JDs unless it is prescribed by law that these costs are covered by the state budget or paid by the JCs. For example, enforcement costs of court rulings on the application of provisional urgent measures shall be covered by the state budget.[384]

In Vietnam, there are variations of notices relating to the coercive enforcement procedures rendering by the executors or the enforcement agents, e.g., notification of coercive judgment enforcement, notification of distraining assets, notification of assets auction, notification of reevaluation results, notification of coercion decisions, etc.

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[380] Regulation (EU) No. 655/2014, Art. 11, 28.

[381] Art. 35.

[382] The GCE, Art. 14.

[383] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 40, Art. 41, 42, and 43, p. 234-248.

[384] More detail sees Chapter 1. VI. 3. b)

In general, notification of judgment enforcement is given by the enforcement agent, and there are some main contents, concluded in the notification, e.g., the name of the enforcement agency, place and date notice issued, legal grounds, purposes of notification, name and address of the JDs, coercive judgment measures shall be used, some outstanding (debt, interest), estimated coercive costs (apply for the notification of coercive judgment enforcement) and other costs incurred, the persons or addresses where the notice of enforcement shall be sent, signed and stamped by the executor.

However, it is clear from the above analysis, the notification of judgment enforcement does not contain valuable information or contents, e.g., notifying the defendants of the consequences of enforcement (including the cost of enforcement) and of the costs of a failure to comply with a decision ordering them to pay; encouraging the defendant to comply with the court order voluntarily and a warning that in case of non-compliance enforcement measures could be used, including, if appropriate, further costs may be applied; ensuring that the parties are served with adequate notice in a timely manner. One more limitation on the enforcement notice is the lack of precise and detailed regulations on the notification costs. For example, although the enforcement law of Vietnam provides that notification costs shall be borne by JDs unless it is prescribed by law that these costs are covered by the state budget or paid by the JCs (Art. 39 Para. 4). However, the Decree No. 62/2015/ND-CP and the Circular No. 200/2016/TT-BTC did not specifically mention to the notification costs. In addition, Art. 43 Para. 1 of the LECJ regulates that announcements on the mass media shall be made under the law or on request of involved parties. The mass media include mainly newspapers, radios or televisions and executors often use the media to notify the enforcement documents if the involved parties' request. In practice, executors use the mass media to notify the enforcement documents in the large cases without permission under the law because of lack of detailed regulations on notification of judgment enforcement. As a result, the announcements on the mass media has many different interpretations and has not been implemented uniformly, sometimes prolonged the enforcement procedures.[385]

In recent years, the electronic information devices are growing rapidly and are widely used in Vietnam. However, the new technologies, e.g., the application of the internet, electronic means, smart phones or computer proliferation is not commonly used for the purposes of notification of judgment enforcement in Vietnam. Direct notification to individuals, agencies or organizations in the course of enforcement proceedings is the number one priority, instead of postal mail security services or electronic means, has led to backlogs or time consuming. The public notification or an announcement on the mass media, e.g., announcements on a daily newspaper or

[385] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on the Civil Judgment Enforcement Law, 2019, Art. 43, p. 245-248.

the broadcast on provincial - level radios or televisions in the course of enforcement proceedings are traditional methods, which is outdated, untimely, and ineffective in the era of the industry 4.0.

In the last decades, the application of IT is being developed strongly (especially the current industrial revolution 4.0).[386] While most people have used the internet, computers, smart phones and its available functions of telephones, etc., the judgment execution is still carried out according to traditional methods, e.g., direct notification, public notification or announcement on mass media, in that direct notification is still one of the priority forms. Traditional forms of notification according to current regulations showed its inefficiency. The fact has shown that the process of notifying the judgment often takes a lot of time and there are many notices while at the same time each executor must enforce several cases simultaneously.[387]

Moreover, the distance from the enforcement agencies to the notified area is not always close, traveling often takes a lot of time, effort of executor, and direct notification is not always successful. With the computer system connected to the Internet as at present, it is possible to consider adding more extensive regulations on how to implement the notice, e.g., executors can send notices to the commune-level People's Committees via email, attached a notification file, or send a fax notice. Then commune-level people's committees' officials in charge can print the notices and publicly posted at the headquarters of the commune-level people's committees. This new notification method will limit the travel of the executors and the enforcement secretaries. In addition, notification can be sent directly by email to the notified subject. A notice of judgment execution may also be sent to the notified subject by smartphone applications. Currently, one of the most popular means of communication is smartphone, which is very convenient for notification. However, it is difficult to store the information that show the documents and contents of the execution profiles.[388]

The problem is that Vietnam should study deeply the international experiences and relevant experiences of Germany in order to supplement and improve the legal provisions related to the field of the notification, enhance the application of IT to

[386] https://www.mark-global.com/industry-4-0/

[387] *Hoang, Thanh Hoa/Nguyen, Van Nghia*: Need to improve the ability to apply IT in notification of judgment execution, http://baophapluat.vn/tu-phap/can-nang-cao-kha-nang-ung-dung-cong-nghe-thong-tin-vao-thong-bao-thi-hanh-an-405922.html.

[388] *Hoang, Thanh Hoa/Nguyen, Van Nghia*: Need to improve the ability to apply IT in notification of judgment execution, http://baophapluat.vn/tu-phap/can-nang-cao-kha-nang-ung-dung-cong-nghe-thong-tin-vao-thong-bao-thi-hanh-an-405922.html.

inform enforcement, ensure timely and effective notification, e.g., by postal service or electronic means.[389]

Consistent with international standards, the experience on the service of notices and the service of documents in the Federal Republic of Germany will help improve the enforcement law of Vietnam. In Germany, in principle, notification and communication are made orally for the purpose of protection against misuse.[390] According to the Justice Communication Act dated 22.3.2005 (BGBL. I, 837), e-civil litigation and e-justice are becoming more and more popular in Germany and the notification of the electrical documents will replace the traditional methods in notification documents.[391] The standards for using electronic documents have been created by the Law of 10.10.2013 (BGB1 I 3786) which entered into force on 01.01.2018. In addition, the legal framework for electronic legal transactions should be taken into account, e.g., § 130a ZPO (electronic document); §§ 753, 754a, 829a ZPO; electronic legal regulation; enforcement form regulation; or bailiff form regulation; etc.[392]

The scope of application of the standard has been thus greatly expanded. However, the general permission has not included an obligation to submit an electronic application. According to § 130d ZPO, such an obligation will not arise until 01.01.2022.[393] § 130d ZPO describes the mandatory use of lawyers and authorities as follows:

"Preparatory has written submissions and their attachments as well as applications and statements in writing submitted by a lawyer, public authority or public law entity, including the groupings formed by it to carry out its public duties, shall be submitted as an electronic document. If this is temporarily not possible for technical reasons, the transmission shall remain permitted under the general rules. The temporary impossibility shall be credible at the time of replacement or immediately thereafter; upon request, an electronic document must be submitted."

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[389] *Hoang, Thanh Hoa/Nguyen, Van Nghia*: Need to improve the ability to apply IT in notification of judgment execution, http://baophapluat.vn/tu-phap/can-nang-cao-kha-nang-ung-dung-cong-nghe-thong-tin-vao-thong-bao-thi-hanh-an-405922.html; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 43, p. 244-248; and Regulation (EU) 2015/2421, Art. 1 (8).

[390] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, Rn. 2, p. 380.

[391] *Schuschke/Walker*, Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 806a, Rn. 1, p. 807.

[392] *Fechter, Maria*: Elektronischer Rechtsverkehr in der Zwangsvollstreckung - Formulare für die Zwangsvollstreckung, Zwangsvollstreckung und Zwangsversteigerung aktuell Tagung des Bundesministeriums der Justiz und für Verbraucherschutz bei der Deutschen Richterakademie in Wustrau im November 2017, p. 97.

[393] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 1, p. 623.

From 02.01.2022, all documents must be submitted electronically.[394] Besides the basic advantages in information technology application, there are also some practical difficulties. For example, correspondence between the enforcement agencies, the creditors and the debtors, which arises during the execution of the enforcement order, is in practice kept up to the settlement of the proceedings, mostly in letter form, i.e. in a documentary manner. These multiple media breaks slow down the "speedy, complete and cost-saving recovery of monetary claims" required by law in § 802a (1) ZPO. At least there is evident optimization potential regarding the speed of execution and the cost savings.[395]

Another challenging concerning applying electronic transactions in civil judgment execution, e.g., when the bailiff is commissioned electronically, there are also technical problems that arise in the case of unplanned representations, especially in connection with electronic legal transactions. Thus, it is also important to find suitable technical solutions that comply with legal standards - in this case, data security and data protection should be mentioned. Since 2017, a number of reforms to improve the efficiency of electronic transaction applications in civil judgment execution have been proposed by German scholars and the German federal bailiffs (*der Deutsche Gerichtsvollzieherbund*), e.g., efficiency in the enforcement of electronic legal transactions should continue to be promoted; effects of electronic legal transactions will only become fully effective for the courts and bailiffs with the introduction of the e-files; form regulations and forms must be adapted to the requirements of electronic legal transactions, these apply in particular to the forms for the enforcement orders and the forms for the application for a seizure and transfer order; evaluation of experience with electronic legal transactions should be carried out on the basis of the existing legal regulations; etc.[396]

VIII. Alternative or participatory enforcement should be prioritized and encouraged

1. International valuable suggestions concerning the alternative or participatory enforcement

The option of adopting a consensual enforcement procedure at the request of the debtor and the active participation of the parties in the enforcement is among the crucial factors of the alternative or participatory enforcement according to the

[394] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 1, p. 625.

[395] *Brückner, Udo*: Bedeutung des elektronischen Rechtsverkehr für Inkassounternehmen, Zwangsvollstreckung und Zwangsversteigerung aktuell Tagung des Bundesministeriums der Justiz und für Verbraucherschutz bei der Deutschen Richterakademie in Wustrau im November 2017, p. 126.

[396] *Fechter, Maria*: Elektronischer Rechtsverkehr in der Zwangsvollstreckung - Formulare für die Zwangsvollstreckung, Zwangsvollstreckung und Zwangsversteigerung aktuell Tagung des Bundesministeriums der Justiz und für Verbraucherschutz bei der Deutschen Richterakademie in Wustrau im November 2017, p. 98-101.

international requirements.[397] An appropriate cooperation between the parties in the enforcement process is another important aspect under the Recommendation Rec (2003)17 of 9 September 2003. This Recommendation also mentions the role of the relevant authorities in promoting the agreement between the JC and the JD, especially in family law matters.[398] Reaching agreement between the parties within a time frame for enforcement is a main priority for attaining the smooth and prompt enforcement. After establishing the agreement, any other enforcement procedures put in place and should not preclude these agreements from taking effect.[399] One of the most outstanding highlights of the arbitration agreement is making people active participants in the resolution of their conflicts as well as building amicable relationships between the parties in order to gain the amicable resolution.[400] Based on the Uncitral Conciliation Rules, an amicable or participatory solution to the enforcement procedures of the enforcement titles is also an essential principle.[401] The Convention of 23 November 2007 on the International Recovery of Child Support and Other of Family Maintenance required that in order to enforce the court decisions effectively, the Contracting States must make effective measures available in the international law, including the use of mediation, conciliation or similar processes bring about voluntary compliance.[402]

Many scientific researches, e.g., in the fields of doing business, investment climate assessments, enterprise surveys have shown that efficient access to justice is a key to the investment climate agenda for emerging market economies. These analytical studies also refer to the amicable resolution of disputes and promote the use of mediation in all investment-related disputes.[403]

2. Vietnamese regulations on the alternative or participatory enforcement

According to the CPC 2015, reach agreement between the parties in the resolution of civil cases is one of the essential principles in the civil proceedings.[404] For example, during the settlement of a civil case, the involved parties shall have a right to terminate or change their petitions or voluntarily reach agreement with one another, which is not contrary to law and social ethics.[405] The courts have the responsibility to conduct mediation and create favorable conditions for the involved

[397] The GCE, Art. 10.

[398] Principle III.1.c

[399] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 70.

[400] *The Scientific Council of the UIHJ*: GCE, 2016, p. 163-164.

[401] The Uncitral Conciliation Rules of 23 July 1980.

[402] Art. 34, i.

[403] *Investment Climate Advisory Services of the World Bank Group*: Alternative Dispute Resolution Guidelines, 2011, p. V.

[404] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 6, p. 54.

[405] The CPC 2015, Art. 5 Para. 2.

parties to reach agreement with one another on the resolution of civil cases under the provisions of this Code.[406]

In Vietnam, enforcement process is an independent phase following the adjudication period, in which the JC who has the right to determine his or her own interests and has the right to require the JD to enforce judgments. The JC also has the right to conciliate or to reach agreement with the JD on the measure of enforcement, even without requesting the JD to execute a part or whole of the judgment. The self-determination of the involved parties has become an important principle in the CJE proceedings.[407] At present, in Vietnam, the ECJs is primarily based on the JC's application, which is to comply with the principle of the involved parties' right to self-determination in the civil procedures. It is not in any cases; judgments are automatically enforced. This depends on the right of the litigant. In addition, at any stage of the enforcement process, the JC also has the right to reach an agreement with the JD or those with related rights and obligations at the time, place, method and content of judgment enforcement, and may even agree otherwise with the content of the judgment.[408] For instance, the court required the debtor S must pay an amount of VND 100 million to the creditor G within a month, but S and G agreed that S only pay an amount of VND 50 million to G within 05 years or instead of paying VND 100 million, S can give G the right to use a land area of equivalent value.[409]

The LECJ encourages the conciliation and settlement agreement between the JC and the JD on the contents and measures of enforcement and other matters related to the enforcement, if they are not contrary to laws, social ethics and do not obstruct the enforcement proceedings. In fact, the mutual agreement between the JC and the JD on the judgment enforcement has provided since 2004 in the ordinance on execution of civil judgments.[410] Art. 6 Para. 2 of this Ordinance regulated that the JC and the JD was entitled to negotiate with each other at the time, venue and mode of judgment execution, which, however, must not be contrary to law and social morality. Inheritance and development this regulation, the LECJ continues to regulate that the involved parties may reach agreement on judgment enforcement, if the agreement does not violate the prohibitions prescribed by law and is not contrary to social

[406] The CPC 2015, Art. 10.

[407] *Nguyen, Thanh Thuy*: Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 81-82.

[408] The LECJ, Art. 7 Para. 1 Sub-para. c and Art. 7a Para. 1 Sub-para. a.

[409] *Nguyen, Thanh Thuy*: Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 13-14; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 6, p. 54.

[410] This Ordinance was issued by the Standing Committee of National Assembly on 14 January 2004 and took effect as from 01 July 2004, was replaced by the Law on Enforcement of Civil Judgments from 01 July 2009.

morality. Outcomes of judgment enforcement under agreements will be recognized. At the request of involved parties, enforcers shall witness the judgment enforcement agreement. In case involved parties fail to strictly comply with their agreement, they may request a CJE agency to perform unperformed part of their obligations under the judgment or ruling.[411]

Apparently, that mediation, conciliation or reaching agreement as a way of bringing about possible resolution of disputes in the enforcement proceedings in Vietnam. However, there are also major limitations relating to these alternative dispute resolutions.

First and foremost, its effects on the speed of enforcement. In the course of executing judgments, there are plenty of types of decisions on enforcement of judgments, e.g., postponement, suspension, termination of judgment enforcement or return of written requests for judgment enforcement and a large number of competent agencies issuing directly or indirectly decisions on enforcement of judgments, e.g., CJE agencies, competent courts and competent procuracies. In addition, the enforcement process is extended in order to set a time limit for the voluntary execution of a judgment, even after the parties have failed to reach a mutual agreement on self-enforcement. There are numerous shorts of the time limit occurring in the course of enforcement in order to reach agreements, e.g., the time limit for the involved parties to agree on the prices, the time limit for postponement of judgment enforcement, the time limit for the litigants to initiate a lawsuit in cases where the dispute arises, etc. These time limits have made the execution of the judgment is interrupted, prolonged for a long time with extremely costly.[412] One example of time consuming for reaching agreement is about the identification, division and handling of common assets for judgment enforcement.[413] There are several agreements in the course of identification, division and handling of common assets for judgment enforcement between the JD and co-owners of assets or land use rights (Art. 74 of the LECJ).[414] In many cases, if the JD who want to obstruct the enforcement of judgments, they exercise the right to reach agreements to deliberately prolong the timeline of the enforcement. He or she could take advantage of the provisions of the agreed period for dispersing enforcement assets or evading enforcement obligations.

[411] The LECJ, Art. 6.

[412] *Nguyen, Thanh Thuy*, Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 106; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, Art. 7a, Art. 7b, p. 68-70.

[413] The LECJ, Art. 74.

[414] See A. Chapter 1. V. 2. g) aa) bb) cc); *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 74, p. 412-419.

Art. 74 Para. 1 of the LECJ is one of the vivid illustrations. The division of common property of husband and wife or household is a very complicated issue for executor. In fact, the Art. 74 Para. 1 of the LECJ is not entirely effective in practice, because most of the parties have not filed a lawsuit. For the JDs, they have not volunteered to enforce the judgment, or find a way to extend the time for enforcement. For others, they also have not sued because they do not have a dispute with the JC, or they consider that that is the responsibility of the executor under the enforcement law. While empowering the executor the right to initiate a lawsuit against a new case to enforce a judgment which has taken legal effect is unreasonable and there are many different views as executor is not one of the involved parties.[415]

Secondly, there is a clear conflict between the provisions of the law on the subjects is entitled to reach an agreement on judgment execution. Art. 6 of the LECJ regulates that "involved parties" have right to reach agreement on judgment enforcement and Art. 3 Para. 1 of the LECJ stipulates that "involved parties" include JC and JD. This means that only the JC and the JD are subjects to reach agreements on judgment enforcement. Meanwhile, Art. 7 Para. 1 Sub-para. c of the LECJ provides that the JC has the right to reach agreement with not only the JD but also with persons with related rights and obligations on the time, place, method and content of judgment enforcement. Similarly, Art. 7a Para. 1 Sub-para. a of the LECJ stipulates that the JD has right to reach agreement not only with the JC but also with persons with related rights and obligations on the time, place, method and content of judgment enforcement.[416] These controversies in the enforcement law of Vietnam are inconsistent with the global standard on the enforcement which is reaching agreement between the parties within a time frame for enforcement is a priority for attaining the smooth and prompt enforcement. After establishing the agreement, any other enforcement procedures put in place and should not preclude these agreements from taking effect.[417]

Another considerable harsh legal practice on reaching agreement between the involved parties in judgment enforcement may be that the enforcement law of Vietnam currently is not referring to the implementation of the legal agreements between parties in civil transactions, economic, trade and some other areas, which are not the judgments or the decisions of the court or awards and decisions of

[415] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 74, p. 417-418.

[416] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*, Commentary on Civil Judgment Enforcement Law, 2019, Art. 6, p. 54.

[417] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 70.

commercial arbitrations.[418] Meanwhile, Art. 3 Para. 2 on basic principles of civil law stipulates that each person establishes, exercises/fulfills and terminates his/her civil rights and obligations based on freely and voluntarily entering into commitments and/or agreements.[419] Each commitment or agreement that does not violate the law and is not contrary to social ethics shall be bound by contracting parties and must be respected by other entities.

The enforcement law of Vietnam has not yet mentioned one of the modern and fundamental concepts of judgment execution, that is "amicable enforcement procedures".[420] Meanwhile, this concept has been widely used in the Federal Republic of Germany. So, these are also good experiences to help improve the Vietnamese CJE in the coming time. According to German law, the purpose of the enforceable instrument is primarily to protect the rights and benefits of the JCs by restoring their rights as they were before the breach.[421] One of the most fundamental principles of the enforcement relating to the monetary claims and therefore, it is also the duty of the bailiff, which is to make efforts at amicably terminating the matter (§ 802a (2) No. 1 ZPO). Essentially, it is vital that the plaintiff can submit on a voluntary basis complaint against defendant to find independent, impartial, transparent, effective, prompt and fair procedures for alternative dispute resolution.[422] In all situations of the proceedings, the bailiff is to endeavor to achieve an amicable termination of the matter.[423] The objective of the amicable settlement, which applies to all periods of the enforcement proceedings against a monetary claim by the bailiff (§ 68 (1) S. 1 GVGA), including the procedure from the application for the acceptance of asset's information to the entry of the debtor in the debtor register. In order to achieve an amicable termination (according to § 68 (1) S. 1 GVGA), the task of the bailiff is at least partially clearly specified in the management instructions by the rules of procedure. According to § 59 (1) S. 1 GVGA, the bailiff must, in principle, only request the debtor to pay voluntarily for the debt before enforcement. In addition, the bailiff should point out to him incalculable costs of execution. According to § 58 (1) S. 3 GVGA, he must be borne in mind that only the costs strictly necessary and incurred expenses. Finally, he must consider possible wishes

[418] *Nguyen, Van Nghia*, Provisions of the Law on Civil Judgment Execution on executed Judgment and Decision-The real Situation and some Recommendations, Democracy and Law Journal, Vol. 11 (308)/2017, p. 53-58.

[419] The Civil Code 2015 was passed by the 13th National Assembly of Vietnam during the 10th session on 24 November 2015, came into force from 01 January 2017.

[420] *The Scientific Council of the UIHJ*: The Preamble of GCE, 2016, p. 126.

[421] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 87, p. 56.

[422] *Linke/Hau*: Internationales Zivilverfahrensrecht, 7. Aufl. 2018, Rn. 11.37, p. 225.

[423] § 802b (1) ZPO; *Saenger, Ingo*: Zivilprozessordnung, Handkommentar, 7. Aufl. 2017, Rn. 1, 2, 3, p. 1877.

and benefits of the creditor and the debtor regarding to the implementation of the judgment enforcement as far as possible.[424]

Finally, the freedom of personal development in the field of enforcement has not been clearly stipulated as a constitutional principle, although this is one of the fundamental characteristics of human rights which has been recognized in the Vietnamese Constitution. For example, the Constitution of Vietnam regulates

"1. In Vietnam, human rights and citizens' rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law. 2. Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being".[425]

In addition, the exercise of human rights and citizens' rights may not infringe upon national interests and others' lawful rights and interests.[426] Although the Civil Code 2015 also mentioned to some basic principles of civil law, e.g., each person must establish, exercise/fulfill, or terminate his/her civil rights and/or obligations in the principle of goodwill and honesty. The establishment, exercise and termination of civil rights and/or obligations may not infringe national interests, public interests, the lawful rights and interests of other persons.[427] However, these principles do not directly relate to the principle of personal development freedom and they were not stipulated in the Vietnamese constitution. On the contrary, the German Federal Republic has clearly defined this principle in Art. 2 (1) GG, which is:

"Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law".

Based on this constitutional regulation, in the field of the enforcement, both parties have the freedom right on disposition about beginning and ending the enforcement process. It will have assumed, as in the case of the cognitive procedure, that the disposition of the JC and the JD at the beginning and ending of the enforcement proceedings is subject to the scope of constitutional freedom of action. The JC does not have to enforce, and he does not have to continue his enforcement, the JD can voluntarily satisfy his obligations, he can - not necessarily - file an antitrust order. A

[424] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 802b ZPO, Rn. 2, 3, p. 694.

[425] Art. 14.

[426] The 2013 Constitution of Vietnam, Art. 15 Para. 5.

[427] The Civil Code 2015, Art. 3 Para. 3, 4.

settlement without the freedom of the decision on whether the enforcement procedure would be unconstitutional.[428]

Grasping excellent experience from the German law, the right to free development of the personality should be considered as a basic constitutional principle and added to the Vietnamese constitution, providing the basis for improving the law of enforcement as well as creating a close relationship between the enforcement law and the constitutional law.

IX. Use of new technologies in improving the efficiency of the enforcement process

1. International requirements on using of new technologies in the civil judgment enforcement proceedings

It goes without saying that new technologies have remarkably contributed in increasing the efficiency of enforcement in the last decades. Acts of enforcement may be fulfilled through using all forms of support, including non-material ones, subject to the precautions provided for by the domestic law of the State where the enforcement is made.[429] Referring to the new technologies has been being applied in the enforcement field, Recommendation Rec (2003)17 of 9 September 2003 stated clearly in the preamble that, having regard to the importance of IT in improving the efficiency of the enforcement process and the relevant CoE legal instruments in this field, including Recommendation Rec (2003)14 on the interoperability of information systems in the justice sector and Recommendation Rec (2003)15 on the archiving of electronic documents in the legal sector. Recommendation Rec (2003)14 addresses that an IT strategy for the justice sector should take into account, *inter alia,* for example stage-by-stage computerization of the justice system; the establishment of communications infrastructure, including email facilities; the development of standard software for databases, etc.[430] IT projects in the justice sector should be implemented in various interconnected fields, should be based on cost-efficiency considerations and taking full account of the need to ensure the security of information and personal data protection as required by applicable international standards and national law. Meanwhile, Recommendation Rec (2003)15 focusing on the preservation of documents as well as applying electronic documents, including texts, audio, video in digital form in the enforcement proceedings.[431] Archived electronic documents are readable and accessible and should be guaranteed overtime, considering the evolution of IT. According to this Recommendation,

[428] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 7.19, p. 87.

[429] The GCE, Art. 12.

[430] *The Committee of Ministers of the Council of Europe*: Recommendation Rec (2003)14, Principle II. 3.2.

[431] *The Committee of Ministers of the Council of Europe*: Recommendation Rec (2003)15, Principle 1.

member states should ensure that legal norms regulating archiving applied also to electronic documents. Security measures, conservation measures, document formats and electronic signatures are also analyzed and encouraged in the course of enforcement in order to enforce judgments effectively and efficiently.

It was the fact that there were some courts refusing the applications submitted by electronic means, although the civil procedure code provided for the possibility of applying in law by means of electronic communications. It was not justified under the basis of Art. 6 §1 of the European Convention and to be protested against according to the judgment Lawyer Partner A.S.v. Slovakia on 16 June 2009 (No. 54252/07).[432] For the purpose of encouraging use electronic communications, the State must equip its courts with the material means to ensure that the right of access of persons to the courts is respected. Expanding the ability of accepting modern communications technologies in the enforcement procedures, completing of the standard forms required by regulation and enhancing communications between the authorities involved in the enforcement procedure are prime requirements under the Regulation (EU) No. 655/2014. Electronic tools are also encouraged in order to support the work in the enforcement proceedings.[433] For example, under the Directive 68/151/EEC, all detailed information on individual firms, e.g., legal status, date of establishment, company capital, text code, sector of activity, corporate bodies and their powers of representation, sometimes even the number of employees is often recorded in central registers electronically and is accessible online.[434] In addition, to further reduce the costs of litigation and the length of proceedings which have been applied with the European small claims procedure, the use of modern communication technology and electronic means by the parties, the courts and tribunals should be further encouraged and used as the preferred means to the extent possible, where such services are available and admissible.[435] In the European countries, the users and the registered consumers can connect the land registers of different European Member States throughout the EULIS. The web page of the service works as a link between the website of the national registers. Through EULIS a registered user on the website of one national land registry can access the registry of another State by conducting a search in accordance with the criteria on the site.[436]

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[432] *The Scientific Council of the UIHJ*: GCE, 2016, p. 165.

[433] *The Scientific Council of the UIHJ*: GCE, 2016, p. 166.

[434] First Council Directive of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC); *Hess, Burkhard*: Study No. JAI/A3/2002/02 on making more efficient the Enforcement of Judicial Decisions within EU, p. 22.

[435] Regulation (EU) 2015/2421, Preamble No. (7), (8), (9) and (10).

[436] *Kengyel/Nemessányi*: Electronic Technology and Civil Procedure, New Paths to Justice from Around the World, Vol. 15, 2012, p. 191-196.

2. Vietnamese laws on the application of information technology in the field of civil judgment enforcement

Under the LECJ, the State shall assure IT and other necessary means and equipment for CJE agencies.[437] However, this regulation is not elaborate enough and extremely fuzzy, thus it causes low efficiency in practice. Under the enforcement law of Vietnam, the use of information technologies in general and the use of electronic documents in the process of enforcement still have so obvious drawbacks. The following regulations for the enforcement are some striking illustrations.

According to the Art. 28 of the LECJ, courts that render judgments or decisions, within 30 days or 15 days (depending on each type of judgments or decisions) after these judgments and decisions take legal effect, deliver them to competent CJE agencies. Courts or commercial arbitrations that render decisions on application of provisional urgent measures shall, right after rendering such decisions, promptly deliver them to CJE agencies.

With respect to receiving judgments or decisions, upon receiving a judgment or decision of a court or commercial arbitration, the CJE agency shall check it and record it in a book.[438] A judgment or decision record book must clearly indicate ordinal numbers and dates of receipt of judgments and decisions as well as their numbers and dates, and names of issuing courts or commercial arbitration; full names and addresses of involved parties and titles of other related documents. The in-person delivery and addresses of involved parties and titles of other related documents. These are manual jobs that require a lot of time, effort and paperwork, but can apply IT to replace these jobs.

From the above analysis, the delivery of judgments or decisions between the court and the arbitrator with the CJE agency is currently only regulated by the form of direct delivery or by post but not yet stipulated by the form of electronic data transmission, e.g., electronic documents. Current forms of delivering judgments or decisions take a great deal of time, especially in case the court or the arbitrator is far away from the office of the CJE.[439] In 2005, Law on E-transactions of Vietnam were passed and took effect as of 01 March 2006. This law only applies to agencies, organizations and individuals opting for transactions by electronic means.[440] Moreover, general principles in e-transactions is to voluntarily select electronic means for transactions and to mutually agree on the selection of the type of

[437] Art. 24

[438] The LECJ, Art. 29.

[439] See A. Chapter 1. VII. 2. c; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 28, p. 184-190.

[440] The 2005 Law on E-transactions, Art. 2.

technology for e-transactions.[441] In addition, this law only encourages agencies, organizations and individuals to invest in and apply e-transactions. As a result, electronic means has been less widely applied in practice since it was enacted, although this law contains many valuable regulations, e.g., the legal validity of data messages, data messages being as valid as original copy, or legal validity of e-signatures.[442] There was almost no reference and close relationship between the provisions of the enforcement law and the provisions of the electronic transaction law.[443]

Another complicated procedure relating to the use of new technologies in the enforcement process is the receipt or rejection of requests for judgment enforcement. Accordingly, an involved party may directly request or authorize another person to request judgment enforcement by filing a written request, making an oral request or sending a written request by post. The judgment enforcement requester shall submit relevant judgments, decisions or documents. The date of sending a written request for judgment enforcement is the date when the judgment enforcement requester files the written request or makes an oral request or the date when the postmark is affixed by the sending post office.[444]

Thus, at present under the enforcement law, there are three forms of request judgment enforcement, including direct filing a written request, making an oral request or sending a written request by post. The involved parties must submit both the requirements and the relevant judgments, decisions and documents. Unfortunately, there are not any regulations in the LECJ regarding to sending and receiving requests for CJE by electronic means.[445] In fact, these forms of execution requirements are no longer appropriate because the enforcement process was unnecessarily lengthened, the time lines for enforcement procedures were not guaranteed (time consuming) and therefore the efficiency of civil judgment execution was affected. In fact, there are still major limitations related to the use of IT in the judgment enforcement proceedings. The first restriction is the lack of a legal framework to take advantage of new technology in exploiting the benefits of IT to improve the efficiency of the ECJs, especially the notification, transmit the contents of the enforcement of judgments on the internet. Secondly, the ability to use computers as well as internet access of some enforcers and civil servants is still limited, especially the CJE agencies in mountainous, remote and isolated areas where

[441] The 2005 Law on E-transactions, Art. 5 Para. 1, 2.

[442] Art. 11, 13 and 24.

[443] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 29, p. 192.

[444] The LECJ, Art. 31.

[445] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 31, p. 202.

the application of IT still has many difficulties. In addition, the management software for the process of receiving judgments and rulings, enforcing the civil judgments and statistical reports of civil judgment execution has not been applied in the system of CJE.[446]

In Germany, the form of the petition for enforcement is set out on paper. In addition, since 01 January 2018, the request for enforcement may be filed in electronic form. Making the necessary adjustments to the electronic form is the responsibility of the States.[447] There is the fact that the information about the debtor's assets may be held in several different registers in different locations. It may be more difficult for the JC to find the debtor's property if he has changed his domicile or his own property or other assets in several locations. However, a computerized database, on-line access to company and commercial register, registrars of commercial courts, etc, are acceptable solutions to the problem.[448] Court facilities are modern, adequately outfitted with IT, and accessible to the litigants and public.[449]

X. The assistance of the forces of public order in the enforcement procedures

1. International regulations on the assistance of the forces of public order

According to the GCE, the State must not only guarantee the assistance of the forces of public order to the professionals instructed with the enforcement of enforceable titles who request same within a reasonable time period, but also ensure that judicial officers and enforcement agents are able in the context of the implementation of an enforcement measure to enter the premises belonging to the debtor or occupied by same even without his consent or in his absence. When the goods of the debtor are to be found by a third party, the authorization of a court to enter the premises is required.[450]

Similarly, the State shall have responsibility for providing the assistance in the execution of decisions and in other writs of execution. The executory clause includes the direct responsibility of the police force. Any default or refusal by the State to lend assistance shall commit its liability.[451] Sharing the same opinion with the GCE, the Uniform Act also affirms the right of the judicial officer or the enforcement agent to enter premises with the purpose of implementing enforcement measures. To meet

[446] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 129.

[447] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 210, p. 124.

[448] *Kennett, Wendy*: The Enforcement of Judgments in Europe, 2000, p. 126.

[449] *Murray/Stürner*: German Civil Justice, 2004, p. 9.

[450] Art. 13.

[451] The Uniform Act, Art. 29.

the requirements of the legal conditions, the Uniform Act provides not only the bailiff, but also the process-server may enter a place, whether used as an abode or not and open doors and movables.[452]

As stated in the ECtHR, there are numerous occasions indicating the duties and responsibilities of the State for enforcement. In order to guarantee the safety of the enforcement agent, the State must lend its assistance by placing the forces of public order at the disposal of the judicial officer. Take the case of Pini and Bertani and Manera and Atripaldi v. Romania on 22 June 2004 (applications No 78028/01 and 78030/01), the ECtHR stated that:

"The court considers that such conduct towards bailiffs, who work to ensure the proper administration of justice and thus represent a vital component of the rule of law, is incompatible with their position as law-enforcement officers and that action should be taken against those responsible. In this connection, it is for the State to take all the necessary steps to enable bailiffs to carry out the task they have been assigned, particularly by ensuring the effective participation of other authorities that may assist enforcement, where the circumstances so require, failing which the guarantees enjoyed by a litigant during the judicial phase of the proceedings will be rendered devoid of purpose".[453]

2. Vietnamese law with the assistance of the forces of public order

For the purposes of protecting the acts of judgment enforcement in the course of coercive judgment enforcement, enforcers shall work out plans on conducting coercive judgment enforcement in case of necessity to mobilize forces. These coercive enforcement plans shall be promptly sent to the public security offices at the same level, commune-level people's committees of localities where the coercive enforcement is conducted, and agencies, organizations and individuals related to the coercive enforcement. Related agencies, organizations and individuals shall comply with plans and requests of enforcers. Within three working days after receiving the coercive enforcement plans of the CJE agency at the same level, public security offices shall work out coercive enforcement and coercive enforcement protection plans. Public security officer shall arrange necessary forces and means to maintain order and protect scenes, promptly prevent and hand acts of dispersing assets, obstructing or opposing the judgment enforcement, hold opposing persons in custody, and institute criminal cases when seeing signs of crimes.[454] The coordination between the executor with the police force to protect the ECJs are specifically stipulated in the Joint Circular No. 03/2012/TTLT-BTP-BCA dated 30

[452] Art. 41.

[453] *The Scientific Council of the UIHJ*, GCE, 2016, p. 167, 168.

[454] The LECJ, Art. 72.

March 2012 of the Ministry of Justice and the Ministry of Public Security on the Coordination and Protection the Coercive Enforcement of Judgments. However, the enforcement law and this guiding document have not yet specific provisions which circumstances should require the help from the police force, which circumstances should not the help from the police force. Due to lack of regulations and detailed guidelines, executors are often confused and have not applied uniformly the assistance of the police force on the nationwide.[455] Meanwhile, the experience of the Federal Republic of Germany has shown that the state power is only used for the purpose of judgment enforcement by the bailiffs in the necessary circumstances. The principle of appropriateness is always required by law, especially the use of power does not exceed the necessary enforceable measures.[456] The bailiff may only use force to overcome resistance to enforcement, but in some cases, he can control the enforcement procedure by his or her own competence. This includes the decision insures police assistance that the police must provide to the bailiff.[457]

In addition, there is a fact that the responsibility of the proceeding authorities, e.g., prosecution, investigation, and trial in the application of preventive coercive measures and provisional measures are still limited. This has led to the dispersal of property before the court judgment comes into effect.[458] In particular, the role and responsibility of the court in the process of enforcement of judgments are very unclear and limited. Therefore, the execution of the judgment was very difficult and complicated, many court judgments were not enforced, and the rights of the JCs were not guaranteed as a result.[459] If the investigation authorities, People's Procuracies and adjudicating agencies fully implement the preventive measures, e.g., distraint, freeze, or temporary seizure of the prosecuted person in order to prevent dispersal of property during the period of investigation, prosecution and adjudication, judgment execution work will be convenient.[460]

[455] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 72, p. 402-406.

[456] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 758 ZPO, Rn. 9, p. 348.

[457] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, § 758 ZPO, Rn. 7, p. 1834.

[458] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 180, p. 113-122.

[459] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 123, 124, 134, 149 and 150.

[460] *Hoang, The Anh*: Supervision of Civil Judgment Enforcement, PhD. Dissertation, 2015, p. 136.

XI. Conclusions for Chapter 1

Vietnam is a South East Asian country, which has not yet joined as a member State of the UIHJ. At the international level, Vietnam is a dynamic member State of a wide range of large international economic organizations, e.g., ASEAN (7.1995), AFTA (12.1995), ASEAM (3.1996), APEC (11.1998), BTA (12.2001), WTO (1.2007). Vietnam is also a member State of other international important Conventions, e.g., UN (9.1977),[461] the VCLT (10.2001),[462] the ICCPR (9.1982),[463] the ICESCR (9.1982),[464] etc. Especially recently, Vietnam has become an important trading partner of EU and the two sides signed two important agreements, namely FTA and IPA on 30 June 2019.[465] The more involved they are in international economic and trade relations, the more disputes will arise from these areas.

The CPV addresses that judicial reform must stem from Vietnam's legal traditions and the past achievements of the socialist judiciary of Vietnam, and selectively adopts international experiences in line with the specific context of the country and the requirements of the proactive international integration and future social development trends.[466] The Resolution No. 49-NQ/TW also insists on organizing the effective implementation of the international treaties which Vietnam has signed or to which it has acceded. Signing judicial assistance agreements with other countries, especially neighboring countries, other countries in the region, and countries traditionally having relations with Vietnam. Training a sufficient number of judicial staff with specialized skills and command of foreign languages in the area of international justice in order to protect the rights and legitimate interests of the Vietnamese State, organizations, and citizens and to meet the demands of the country's international and regional integration process.[467] One of the main purposes of the Resolution No. 49-NQ/TW is the introduction a mechanism to ensure that every legally binding court judgment must be enforced.[468]

In principle, the Vietnamese guidelines for the improvement in the civil law enforcement system are in line with the fundamental principles of the GCE. However, the guidelines are too general and have not yet been fully specifically regulated by the law. Therefore, the fundamental principles of the GCE as well as the principles of civil procedure law of the Federal Republic of Germany almost

[461] http://www.un.org/en/member-states/

[462] https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf

[463] https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf

[464] https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf.

[465] https://www.consilium.europa.eu/en/press/press-releases/2019/06/25/eu-vietnam-council-adopts-decisions-to-sign-trade-and-investment-agreements/.

[466] Resolution No. 49-NQ/TW, Section I. 2.4.

[467] Resolution No. 49-NQ/TW, Section II. 2.6.

[468] Resolution No. 49-NQ/TW, Section II. 2.1.

completely new in both theoretical and practical sides for ECJs in Vietnam, e.g., the principle considers the right of enforcement as a fundamental right, the principle of requiring the debtor is answerable his debts on all his assets, or recognition and enforcement of small claims. There is also a considerable difference between the principle relating to the costs and fees of enforcement, according to the GCE and Vietnamese law. It is clear from the analyzed above that there is a huge gap in the fundamental principles between the GCE and the enforcement law of Vietnam. It is worth noting, in this context, that the Vietnamese National Assembly should take into account the right of enforcement must be respected as a fundamental right and should be provided in the Constitution of Vietnam and it should be guaranteed by the Constitution.[469]

On the contrary, German enforcement law basic virtues in accordance with the fundamental principles of the GCE, e.g., both German enforcement law and the GCE consider the right of enforcement as a fundamental right, the responsibility of the debtor on transparency of all his/her assets, the principle of paying the enforcement costs, etc. It can be concluded that the Vietnamese law on ECJs has major limitations in comparison to the international standards as well as German enforcement law.

The basic principles analyzed in this Chapter are also important principles in the organization and operation of the enforcement agencies. These fundamental principles play a decisive role in defining common provisions on enforcing effectively the judgments, identifying the security measures and the provisional measures to ensure the enforcement of judgments and decisions of the court. These contents will be analyzed in Chapter 2 and the following Chapters.

[469] *Nguyen, Van Nghia/Hoang, Thi Thanh Hoa*: Legal Mechanisms to ensure the Enforcement of Civil Judgments and Rulings having taken Legal Effect, Jurisprudence Journal, 06 (217), 06-2018, p. 14-28.

B. Chapter 2:

The Enforcement Agents, Judicial Officers and Judicial Authorities

In 2003, the European Council issued the Recommendation Rec (2003)17 of 9 September 2003, which has provided the basic principles on organization, operation, and supervision of enforcement agencies.[470] Accordingly, in 2007, 25 EU states had established the quality standards for enforcement agents based on the Recommendation Rec (2003)17.[471] Since then, these standards have been thoroughly studying and further developments were made, e.g., CEPEJ Studies No. 8, Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, and Guidelines for a better implementation of enforcement of 17 December 2009, etc. In Vietnam, the system of civil judgment execution in general and enforcement agents, judicial officers as well as judicial authorities particularly are struggling to implement the judicial reform program, since many limitations still exist. Therefore, the international standards in these areas along with experiences of Germany analyzed below will be valuable lessons for Vietnam.

I. Enforcement agents and judicial officers

1. Organization of the profession and the status of enforcement agents and judicial officers

Overall, depending on various cultures and political systems, there are three different typologies of CJE systems in the world. The first typology of enforcement system based on the judicial or administrative nature of enforcement; court function, and character of the bailiff's enforcing activity is the public or private.[472] The second typology of enforcement system relates to the uniform or organization of segregated organization of enforcement organs and procedures. The products of this classification are centralized and decentralized systems.[473] The foundation of the

[470] *Gramckow, Heike*: Good Practices for Monitoring the Effectiveness of Enforcement Actions and Assessing the Performance of Bailiffs, 2014, p. 54.

[471] Including 11 member states that joined the CoE before 01.01.1990 which are Austria, Denmark, Finland, Germany, Iceland, Netherlands, Portugal, Turkey, UK- England/Wales, UK-Northern Ireland, UK-Scotland and 14 member states that joined the CoE after 01.01.1990 which are Albania, Armenia, Azerbaijan, Bulgaria, Czech Republic, Hungary, Moldova, Monaco, Poland, Romania, Russian Federation, Slovakia, Slovenia, Ukraine. More detail sees CEPEJ Studies No. 8, p. 91.

[472] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 8; *Kerameus, Konstantinos D.*: Enforcement in the International Context, 1998, p. 272-279.

[473] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 44.

third typology is the features of an efficient system and the best enforcement practices.[474]

a) International requirements of the professional organization and the status of enforcement agents and judicial officers

In accordance with the GCE, only judicial officer or enforcement agent authorized by the state may conduct an enforcement procedure in accordance with national law.[475] Under the CEPEJ Guidelines for a better implementation of enforcement of 17 December 2009, in order for facilitating the collective representation and the gathering of information, each member state should establish a professional body of the enforcement agents representing all members of the profession.[476] In the States where the professional organizations of enforcement agents have been established, membership of this representative body should be compulsory participatory.[477] This professional bailiff body also plays an important role in supervising the civil judgment enforcement activities. Among the EU countries, 15 countries have selected this model for supervising the activities of enforcement agents (behind the number of countries that have chosen the Ministry of Justice or Court for supervision and control the enforcement agents).[478]

The CJE agencies are nowadays organized with the modern IT equipment, e.g., computers, telephones, fax machines, Internet connections, job specific upgradeable IT systems with appropriate means of transport. With modern equipment in the appropriate working conditions with suitable human and material resources will allow the enforcement agents to perform their role as effectively as possible.[479]

In order to guarantee the quality of the enforcement, the judicial officers or the enforcement agents must have a high level of legal qualification, e.g., at least the first degree in law, to comply with their obligations. The professional status of the judicial officers and the enforcement agents must be made subject to the state regulations.[480] Furthermore, the professional status of enforcement agents should be freely determined by the member States in the national law in order to bring as much certainty and transparency to the enforcement process as possible.[481] Since judicial

[474] *Mads, Andenas/Hess, Burkhard/Oberhammer, Paul*: Enforcement Agency Practice in Europe, 2005, p. 56-57.

[475] Art. 16.

[476] No. 29.

[477] No. 30.

[478] *Gramckow, Heike*: Good Practices for Monitoring the Effectiveness of Enforcement Actions and Assessing the Performance of Bailiffs, 2014, p. 57.

[479] No. 32.

[480] The GCE, Art. 18.

[481] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.2.

officers and the enforcement agents are persons who have high professional and ethical standards, it is believed that they should be honorable and competent in the performance of their duties and should act appropriately at all the times.[482] Finally, the status of enforcement agents should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient.[483]

b) The structure of the judgment enforcement agencies in Vietnam

aa) A brief history

From 1862 to 1945, Vietnam was an official colony ruled by the French Empire after a Treaty had been signed by the Nguyen Emperor and Tu Duc. Other research results suggest that Vietnam was under French colonial regime from 1858 to 1954.[484] During that time, the civil law framework of metropolitan France was applied in Vietnam together with the Vietnamese Nguyen Code (Gia Long 1813-1945).[485] These days, the legal system of Vietnam is a civil law jurisdiction, under the profound influence of the French civil law system. Therefore, the current legal system of Vietnam is quite similar to the French civil law system, according to the research results of some Vietnamese scholars, e.g., Dao, Tri Uc/Vo, Khanh Vinh or Dinh, Ngoc Vuong who support the opinion that some Vietnamese substantive laws, especially Vietnamese Civil Law and procedural law, are in the nature of that of the Civil Law.[486] Therefore, in the field of enforcement, Huissier de Justice, which was stipulated in the 1804 Napoleon Code and the 1807 French Code of Civil Procedure , applying in Vietnam from 1862 until 1950 on the nationwide and until 1975 in the South of Vietnam.[487] From 1950 to 1993 (in the North) and from 1975 until 1993 (in the South), the enforcement proceedings were carried out by the local courts under the supervision of the Chief Justice.[488] Since the Vietnamese Ordinance on CJE was

[482] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.4.

[483] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.1-5.

[484] *Truong, Huu Quynh/Dinh, Xuan Lam;/Le, Mau Han*: Basics of Vietnamese History 2001, p. 479; *Nguyen, Minh Tuan*: Haftung für staatliches Unrecht nach deutscher und vietnamesischer Rechtslage im Vergleich, PhD. Dissertation, 2012, p. 26.

[485] *Tay, Alice* (ed.): East Asia - Human Rights, Nation-Building, Trade, Nomos, Baden-Baden, 1999, p. 338.

[486] *Dao, Tri Uc/Vo, Khanh Vinh/Dinh, Ngoc Vuong*: Legal Theoretical and Practical Issues in the Process of International and Regional Cooperation and Integration in Vietnam, 2001, p. 26-27.

[487] *Nguyen, Van Nghia*: Bailiff Institution: History and the need to reform according to judicial renovation, Democracy and Law journal, Vol. 5/2006, p. 39-40.

[488] By the judges who rendered the judgments and court officers until 1972 in the North of Vietnam (Ordinance No. 85/SL of 22 May 1950 providing reform in judicial organs and procedures); by the enforcers and other court officers until 1990 on the nationwide (Decision No. 186/TC of 13 October 1972 of the Chief Justice of the Supreme People's Court, providing organizational Structures, tasks and powers of the enforcers) and continuing to apply over next three years from 1990, enforcement was only carried out by the enforcers (the Vietnamese Ordinance on CJE in 1989).

adopted in 1993, amended and supplemented in 2004. Then the Vietnamese enforcement law was issued in 2008, last amended and supplemented in 2014 by the LECJ. Some articles of the 2008 Law on Enforcement of Civil Judgments which were not being amended are also currently being applied. Under these current laws, the ECJs have been carried out by the CJE agencies acting outside the courts.

The brief history of the development of the judgment enforcement area in Vietnam pointed out that the enforcement proceedings have been granted to the private bailiffs (Huissier de Justice) and had been granted to the courts (the judges or the enforcers/executors belong to the courts). Here, the bailiff had a long existence time (over 100 years from 1862 until 1975). Evidently, there were advantages and disadvantages of this type of the enforcement. For example, reducing the number of outstanding civil judgments unexecuted, cut down the demand for the civil servants in the public sector or the state budget, etc., were the positive side while abuse of power, or the balance principle in protecting the right of the involved parties (the JC and the JD) was not guaranteed, etc., were the downsides.[489] After that, the enforcement procedures were controlled by the courts, lasting for a long time (over 40 years from 1950 until 1993). The statistics have shown that the enforcement of judgments during this time were neglected and disrespected. Poor implementation of the law and weak enforcement of court orders because of low efficiency and limited experience of the judiciary.[490] For example, in the jurisdiction of Ho Chi Minh city with the largest number of lawsuits every year, for a variety of reasons including corruption, only less than haft of all implementation of Ho Chi Minh city, out of a total of 30,551 court decisions rendered in 1994, only 11,335 or 37% were enforced (in 1993, only about 30% of court decisions got enforced).[491] As a result, the judgment enforcement work had to face with many severe condemnations, the judgments were delayed or unsuccessfully enforced, some even were unenforced at all.[492] At the present time, under the LECJ, both the executors and the private bailiffs are responsible for the enforcement of the judgments (the hybrid system). In this model, there is a combination between the public and the private elements in the

[489] *Nguyen, Van Nghia*: Bailiff Institution: History and the Need to Reform according to Judicial Renovation, Democracy and Law Journal, Vol. 5/2006, p. 42-43; *Nguyen, Van Nghia*: Vocational Orientation Development the Profession of Bailiffs in Vietnam and Legal Issues need Improvement, Democracy and Law Journal, Vol. 5 (314)/2018, p. 3-8.

[490] *Nguyen, Van Nghia*: Brief History of Formation and Requirement the Completion of Vietnam's Civil Judgment Execution System in the Spirit of Judicial Reform, the electronic Portal of General Department of Civil Judgment Enforcement, http://thads.moj.gov.vn/noidung/kyniem70nam/lists/tintucsukien/view_detail.aspx?itemid=140; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 158-159.

[491] *Pham, Van Thuyet*: The Emerging Legal Framework for Private Sector Development in Vietnam's Transitional Economy, 1995, p. 35, 36.

[492] *Ministry of Justice, Vietnam, Scientific Research at Ministerial Level*: Improvement of Form and Staff Organizations of Civil Judgment Execution for Effective Implementation of the Civil Judgment Execution Law, 2009, p. 14.

enforcement proceedings. Vietnam has formally adopted this model from the first of January 2016, but the enforcement activities of the private bailiffs are under close surveillance of the public enforcement organs and other state authorities, e.g., People's Procuracies.[493] In addition, it must be noted that the state agents are predominant providers of the service.

bb) The current structure of the civil judgment enforcement agencies

In Vietnam, the ECJ is entrusted to the public body and the private sector working outside the courts. It is evident that this enforcement system is very complicated and has drastically changed over time. It does not belong to one of the common types of dichotomies in the world, e.g., public and private systems; monolithic and pluralistic systems; and non-competitive and competitive systems, but it seems to have almost characteristics of these dichotomies.[494] It is worth noting that, the organizational system of CJE agencies is the first and a decisive factor to the effectiveness of CJE.[495] Enforcement structures and enforcement procedure are closely interrelated.[496] The recent research results suggested that

"Governments should bear in mind that an inadequate enforcement system will be a drain on the effectiveness of any justice system no matter how good it is, and on the economy as a whole".[497]

That is why the CPV and the Vietnamese Parliament have attempted to define the management agencies and the CJE agencies as a basis for the government to specify the organizational model of CJE management agencies, more clearly. Concerning the public sector, there are two CJE management agencies, one under the Ministry of Justice and the other one under the Ministry of Defense and CJE agencies. CJE agencies include CJE agencies of the provinces and centrally run cities; CJE agencies of rural districts, urban districts, towns or provincial cities and judgment enforcement agencies of military zones or equivalent levels.[498]

In the private sector, Art. 1 of the Resolution on an implementation of institutions on bailiffs required termination the private bailiff pilot operation scheme and widened the scope of the private bailiffs on nationwide.[499] Apparently, two systems of CJE agencies are coexisted in Vietnam, i.e., the Ministry of Justice and the

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[493] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 18-21, Art. 25, p. 160.

[494] *Nguyen, Van Nghia*: Research on the Models of Civil Judgment Enforcement in Europe, Legal Professions Review, Vol. 1/2018, p. 76.

[495] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 13-16, Art. 24, p. 149-150.

[496] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability - Tradition and Reform, 2010, p. xxix.

[497] *O'Sullivan, Kim/Bradautanu, Veronica*: Enforcement of Judgments in SEE, CIS, Georgia and Mongolia, 2016 (18) 2, p. 225.

[498] The 2008 Law on ECJs, Art. 13.

[499] No. 107/2015/QH13.

Ministry of Defense, therefore this enforcement system can be called pluralistic system. Furthermore, the judgment enforcement work is entrusted to the private bailiffs and to the public body, therefore this enforcement system can be called the private and public system or mixed (hybrid) system because it relates to the nature of the enforcement agency or where the public (state) system and private system coexist. Finally, there are some competitions between the private bailiffs' offices and even among the private bailiff's offices with the public agencies because the involved parties may choose between the bailiff's offices and the state enforcement agencies to get civil verdicts executed. However, there were no clear competitions among enforcement agents of the same nature, e.g., between the judgment enforcement agencies of the Justice Ministry and the judgment enforcement agencies of the Defense Ministry. The military judgment enforcement system comprises military Judgment Enforcement Administration affiliates to the Ministry of National Defense and Regional military judgment enforcement authorities.[500]

From the above analysis, we can conclude that the judgment enforcement system in Vietnam is a pluralistic, mixed (comprising private and public) system: it is also mixed between non-competitive and competitive approaches. However, compared to the international requirements for the enforcement organ, Vietnam currently has no professional body representing all its members (private bailiffs and executors) at the nationwide in the field of judgment enforcement.

c) The status of the enforcement agents or judicial officers in Vietnam

In Vietnam, the judgment enforcement tasks are assigned to executors and private bailiffs. According to the LECJ, executors are persons tasked by the State to enforce judgments and rulings prescribed in the enforcement law. Enforcers have three ranks, i.e., junior enforcer, intermediate-level enforcer and senior enforcer[501] and shall be appointed by the Minister of Justice.[502] Executors have extensive powers, including the power to summon the parties to his office or the local People's Committee in order to execute the judgment or order, the power to set deadlines within which the JD is bound to comply, and the power to perform applicable enforcement measures, if the JD fails to comply within the prescribed time frame and manner.[503] The executor may also request the court to clarify uncertain points in its judgment or order when they are heads of and deputy heads of CJE management agencies.[504]

Different from the legal status of the executor, private bailiff is not civil servant working in the private sector, e.g., private bailiffs' offices. The Resolution No.

[500] Decree No. 62/2015/ND-CP, Art. 54.
[501] The LECJ, Art. 17 Para. 1.
[502] The LECJ, Art. 17 Para. 2.
[503] The LECJ, Art. 20.
[504] The LECJ, Art. 23.

24/2008/QH12 regulated that to implement the policy on the socialization of some activities related to CJE, the Government is assigned to issue and organize the trial implementation of, regulations on executors in certain localities. Such a trial implementation would start on 1 July 2009 and ended on 1 July 2012. In fact, the private bailiffs were trial implemented in Ho Chi Minh City from 2010 until 2012 and then continuation in the pilot implementation of bailiff institution in some provinces until the end of 2015.[505]

Under the Resolution No. 107/2015/QH13, private bailiffs have been organizing and operating on nationwide since 01 January 2016.[506] Meanwhile, the organization of the enforcement organs and the status of executors, of the verifiers and of the secretaries of civil judgment execution is determined according to the LECJ. Verifiers are responsible for verification of the judgments which have been being executed or have been being complained and/or denounced. In order to help executors and verifiers doing their tasks, the enforcement clerk has been established. The enforcement clerks are also civil servants. All executors, verifiers and enforcement clerks have been working for the state enforcement agencies which are entirely independent of the court systems.[507]

Concerning to the monopoly on enforcement, Art. 15 of the GCE requires any measure that has effects of an extraterritorial nature may only be implemented by a judicial officer or enforcement agent of the state of the place of enforcement. This means that not all areas of civil judgment execution can be done by the private sector. The privatization of the enforcement agents can be beneficial, but this enforcement system may also have some dangers, e.g., the enforcement agent acts for the creditor clients, corruptions (or offering a bribe), violation of the human rights, especially the personal rights of the debtors.[508] In Germany, the court bailiffs and court officers are still civil servants, subject to the rules of law.[509] *Enforcement proceedings are considered to be an essential function of the State power which is*

[505] The Resolution No. 36/2012/QH13 dated 23 November 2012 of the National Assembly on continuing to implement the bailiff institution.

[506] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 160.

[507] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments in Vietnam, 2018, p. 90-101.

[508] *Mads, Andenas/Hess, Burkhard/Oberhammer, Paul*: Enforcement Agency Practice in Europe, 2005, p. 45; *Nguyen, Van Nghia*: Vocational Orientation Development the Profession of Bailiffs in Vietnam and Legal Issues need Improvement, Democracy and Law Journal, Vol. 5 (314)/2018, p. 2-8; *Nguyen, Van Nghia/Pham, Quoc Nam*: Policies and Legislation on civil judgment enforcement in some countries and the ability to apply in Vietnam, specialized in-depth research on civil judgment execution, Democracy and Law Journal, Vol. 03/2019, p. 26.

[509] *Jongbloed, A. W.*: The bailiff in Europe, utopia or reality? 2004, p. 178; *Mads Andenas/Hess, Burkhard/Oberhammer, Paul*: Enforcement Agency Practice in Europe, 2005, p. 175.

exclusively exercised by State organs according to binding to legal provisions.[510] Enforcement is a state procedure for enforcing or securing the private law claims of the creditor against the debtor.[511] Enforcement is carried out exclusively by state enforcement agencies.[512] Under the German law, private coercion (self-help) is prohibited (exception: §§ 229, 562b, 859 BGB), and the authority on enforcement belongs exclusively to the State.[513] The civil judgment execution procedure is shown by the state monopoly in the use of state power.[514] On the contrary, Vietnam is currently operating two systems of CJE simultaneously, the private enforcement system and the public enforcement system. With regard to the public enforcement system, there are two separate CJE systems, including the CJE system affiliated to the Ministry of Justice and the military judgment enforcement system affiliated to the Ministry of National Defense.[515] The persons who have the competence to enforce the civil judgments in the public enforcement systems are executors. With respect to the private enforcement system, there are private bailiff offices operating on the national scale. The persons who have the competence to enforce the civil judgments in the private enforcement system are private bailiffs.[516] At present, the operating private bailiff offices are facing many difficulties and challenges, affecting on the scrupulous protection of the rights and benefits of the involved parties.[517] However, an attempt to issue a new law on the private bailiffs, in order to develop the private bailiff sector in Vietnam, is still a proposal.[518] Vietnam still lacks practical experiences and relevant international experience on the organization and operation of the private bailiffs. With the experiences of the countries that have implemented ineffective private enforcement models and the limitations of the Vietnamese legal system, the selection of the private enforcement model in Vietnam is unlikely to succeed.[519] In Vietnam, the shortcomings of the private bailiff model in comparison

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[510] *Mads, Andenas/Hess, Burkhard/Oberhammer, Paul*: Enforcement Agency Practice in Europe, 2005, p. 174-175.

[511] *Vach, Michael*: Grundzüge des Zivilprozesses und Vollstreckungsrechts, 2000, p. 110.

[512] *Lippross/Bittmann*: Zwangsvollstreckungsrecht mit einstweiligem Rechtsschutz und Einführung in das Insolvenzrecht, 12. Aufl. 2017, Rn. 1, p. 1.

[513] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1, p. 2; *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 7, p. 22.

[514] *Prütting/Gehrlein*: Zivilprozessordnung Kommmentar, 10. Aufl. 2018, Rn. 1, p. 1717.

[515] The LECJ, Art. 13; Decree No. 62/2015/ND-CP, Art. 52, 54.

[516] Resolution No. 107/2015/QH13.

[517] Report No. 538/BC-CP, p. 25; *Nguyen, Van Nghia*: Vocational Orientation Development the Profession of Bailiffs in Vietnam and Legal Issues need Improvement, Democracy and Law Journal, Vol. 5 (314)/2018, p. 2-8.

[518] Decision No. 101/QD-TTg. According to this decision, it is expected that the Law on Bailiff will be issued in 2018. However, by 2019 this law has not yet been issued as planned.

[519] In France, the legal situation is more complicated as the huissiers de justice does not have direct access to administrative assistance but must request the help of the Procureur de la République. In practice, this co-operation does not work efficiently; *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 44-56, p. 8; *Nguyen, Van Nghia/Pham, Quoc Nam*, Policies and Legislation on Civil

to the public enforcement model are still not satisfactory solved. It is inevitable that the model of the CJE privatization will always pursue economic objectives in accordance with the law of the market economy that other targets could be affected or likely to be underestimated, e.g., the protection of the fundamental rights of citizens (personal rights and property rights, especially for parties with interests in opposition), human rights, equal rights between the JCs and the JDs and other humanitarian values, etc. This is also one of the reasons that Germany always considers that the enforcement is the privilege task and responsibility of the state that must be performed by civil servants. The international enforcement practices also indicate that in many cases, it is difficult for a private enforcement system to ensure the harmony of interests between the creditors and the debtors and the third parties because the private bailiff will benefit from their customer who is one of the parties in this relationship.[520] Therefore, the improvement and selection of an effective and efficient CJE system is still a difficult issue for the Vietnamese lawmakers and the Vietnamese politicians in the coming time.

In addition, the separation between the execution of criminal judgments and the execution of civil judgments has also limited the effectiveness of enforcement of judgments in general and each field of judgment enforcement.[521] Currently, in the total number of the backlog of civil cases, the number of civil judgments in the criminal cases accounted for a significant proportion. For example, after 12 months of 2018, on a national scale, the number of criminal judgments related to the property must be enforced by executors were over 219,000, (including 197,000 cases belonging to the proactive enforcement and over 22,000 cases belonging to the enforcement under the request of the involved parties). Finishing the 2018 year, there were 109,000 of such judgments being completely enforced, however, 110,000 backlogs of such execution cases were transferred continuously to the 2019 year.[522]

Meanwhile, until the end of 2018, after 12 months of 2018, across the country, a total of the unenforceable judgments still remains high with over ***340,000 cases*** have not been enforced and were transferred to the following year.[523] After the only first 5

Judgment Enforcement in some Countries and the Ability to apply in Vietnam, Democracy and Law Journal, Vol. 03/2019, p. 26-32.

[520] *Nguyen, Van Nghia*: Research on the Models of Civil Judgment Enforcement in Europe, Legal Professions Review, Vol. 1/2018, p. 76; *Nguyen, Van Nghia*: Vocational Orientation Development the Profession of Bailiffs in Vietnam and Legal Issues need Improvement, Democracy and Law Journal, Vol. 5 (314)/2018, p. 3-8; *Nguyen, Van Nghia*: The Development of the Bailiff Profession in Vietnam and Problems arising, http://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2249.

[521] *Nguyen, Van Nghia*: Implementation of judicial renovation in civil judgment execution, Democracy and Law journal, Vol. 7/2009, p. 32-41.

[522] *The General Department of Civil Judgment Execution, Ministry of Justice*: Report No. 170/BC-TKDLCT, 2018, p. 41-44.

[523] *The General Department of Civil Judgment Execution, Ministry of Justice*: Report No. 170/BC-TKDLCT, 2018, p. 1.

months of 2019, across the country, a total of the unenforceable judgments continues to sustain increased to nearly ***415,000 cases*** have not been enforced and expected to be transferred to the following months and year.[524] In fact, in Vietnam, criminal judgment can be executed by various agencies: the execution of criminal judgments is carried out by the Prisons of the Ministry of Public Security, Criminal Judgment Execution Agencies of Provincial-level Police Departments and Criminal Judgment Execution Agencies of District-level Police Offices (under the Ministry of Public Security).[525] While the enforcement of civil judgments or the civil decisions involved in criminal judgments and decisions is enforced by the CJE agencies (under the Ministry of Justice); and the execution of suspended judgments, non-custodial reform, probation conducted by the local authorities.[526]

In order to cope with many difficulties and challenges in the field of CJE (large backlog or caseload in the court's judgments has not been enforced for many years, rights and interests of the involved parties have not been guaranteed according to the judgments), since 2005, the Resolution No. 49-NQ/TW of 2005 has tried to provide a solution by stipulating that:

"Making available staff and physical infrastructure for the Ministry of Justice to assist the Government in carrying out the unified management of court judgments and decision enforcement".[527]

At the same time, in the implementation plan from 2005 to the year of 2010, Resolution No. 49-NQ/TW required that the following task must be completed:

"Preparation of all conditions, in terms of staffing and physical facilities, required for the handover of judgment execution/enforcement to the Ministry of Justice".[528]

One of the convincing reasons for transferring the work of criminal enforcement management from the Ministry of Public Security to the Ministry of Justice because of many backlogs of civil judgments, especially civil decisions involved in criminal judgments and decisions.[529] In addition, enforcement procedures were very complicated, especially the enforcement of civil decisions involved in criminal judgments and decisions; inconsistent with the international enforcement practice

[524] *The General Department of Civil Judgment Execution, Ministry of Justice*: Report No. 43/BC-TKDLCT, 2019, p. 1.

[525] Art. 10 Para. 2 of the 2010 Law on Execution of Criminal Judgments of Vietnam which was replaced by the Law on Execution of Criminal Judgments of Vietnam dated 14 June 2019 comes into force from 01 January 2020. This new Criminal Enforcement Law still retains the organizational structure and functions of the criminal judgment enforcement agency under the Ministry of Public Security.

[526] Report No. 112-BC/BCS, p. 24-26.

[527] Section II. 2. (2.2.).

[528] Section III. 2.

[529] Particularly in 2012, the amount and value of property in which the judgment debtor are serving imprisonment execution is obliged to enforce about VND 3,000 billion; the amount of money was enforced about VND 353 billion, reaching the rate of 11% (Report No. 289/BC-CP).

and the principles of the international laws, etc., were considered as the main reasons.[530] For example, Recommendation Rec (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics provides that:

"There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system; the police shall not have any controlling functions over these bodies".[531]

Moreover, Recommendation Rec (2006)2 of the Committee of Ministers' to member states on the European Prison Rules addresses that:

"Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services".[532]

At the moment, Investigating Bodies of the People's Public Security, comprising the Investigating Security Office of the Ministry of Public Security; the Investigating Security Offices of the Provincial-level Public Security Departments; the Investigating Police Office of the Ministry of Public Security; the Investigating Police Offices of the Provincial-level Public Security Departments; and the District-level Investigating Police Offices.[533] Meanwhile, system of criminal judgment execution organization, including Criminal Judgment Execution Management Agencies and Criminal Judgment Execution Agencies. Specifically, Criminal Judgment Execution Management Agencies, including Criminal Judgment Execution Management Agency of the Ministry of Public Security and Criminal Judgment Execution Management Agency of the Ministry of National Defense. Criminal Judgment Execution Agencies affiliate to the Ministry of Public Security, including Prisons of the Ministry of Public Security; Criminal Judgment Execution Agencies of Provincial-level Police Departments; and Criminal Judgment Execution Agencies of District-level Police Offices.[534] Here, the Prisons and Investigating Bodies are under the Police so this enforcement system may not fully consistent with the common international practice.

However, relating to the management of judgment execution work, from 2014, Conclusion No. 92-KL/TW requested to stop the implementation of the policy which was mentioned from 2005 in Resolution No. 49-NQ/TW,[535] that is:

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[530] *Nguyen, Van Nghia*: Ensuring Human Right in Judgment Execution, Democracy and Law Journal 2006, p. 189-193.

[531] *The Committee of Ministers of the CoE*: The Appendix to Recommendation Rec (2001)10, Principle III. 6.

[532] *The Committee of Ministers of the CoE*: Recommendation Rec (2006)2, Principle V. 71.

[533] The 2015 Law on Organization of Criminal Investigation Bodies of Vietnam, Art. 5.

[534] The 2010 Law on Execution of Criminal Judgments of Vietnam, Art. 10 Para. 1, 2.

[535] Point 2.4.

"Making available staff and physical infrastructure for the Ministry of Justice to assist the Government in carrying out the unified management of court judgments and decision enforcement".

In this regard, since January 1995, the CPV has proposed a policy, which was:

"Early construction and completion of the law on enforcement in the direction toward centralized state management tasks on the work of enforcement to the Ministry of Justice".[536]

After a long period of research effort, unfortunately, these guidelines did not come true. Though, in the coming time, Vietnam should adjust the legal system to conform with the international standards and practices and to be in accordance with the conditions and practical circumstances of Vietnam, especially in the context of increasing international integration of Vietnam.[537] Until 2019, Vietnam has participated in a large number of important international organizations, e.g., APEC,[538] WTO,[539] CPTPP,[540] BTA,[541] FTA and IPA.[542]

Continuing to implement the model of the enforcement agencies as present, the Ministry of Public Security has been performing the function of state management over the enforcement of criminal judgments and the Ministry of Justice has been performing the function of state management over the enforcement of civil and administrative judgments. The selection of an effective enforcement model is the right of every country,[543] however, the model of judgment execution management in Vietnam should be adjusted to conform to the international standards. Therefore, the study to find out an effective and efficient enforcement model in Vietnam in the future is still a complex problem and a major challenge for the Vietnamese lawmakers and policymakers.[544]

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[536] Report No. 112-BC/BCS, p. 38.

[537] *Do, Son Hai*: International Integration of Viet Nam from Theory to Practice, Communist Review, 2014.

[538] Vietnam joined APEC in 1998, https://www.apec.org/Meeting-Papers/Annual-Ministerial-Meetings/1998/1998_amm.

[539] Viet Nam has been a member of the WTO since 11 January 2007, https://www.wto.org/english/thewto_e/countries_e/vietnam_e.htm.

[540] Vietnam has ratified the CPTPP on 12 November 2018, https://www.whitecase.com/publications/alert/cptpp-enters-force-what-does-it-mean-global-trade

[541] Vietnam and the USA has signed the BTA on 13 July 2000 and the BTA went into effect on December 10, 2001, http://www.usvtc.org/trade/bta/US-VN-BTA.pdf

[542] https://www.consilium.europa.eu/en/press/press-releases/2019/06/25/eu-vietnam-council-adopts-decisions-to-sign-trade-and-investment-agreements/

[543] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 41-57; *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 8-12.

[544] *Nguyen, Van Nghia*: Formation History and Requirements to Complete the System of Organization of Civil Judgment Enforcement under the Spirit of Judicial Reform, http://thads.moj.gov.vn/noidung/kyniem70nam/lists/tintucsukien/view_detail.aspx?itemid=140; *Nguyen, Van*

d) Basic features and the limitations of the legal system of Vietnam on the enforcement of civil judgments

Legal certainty and the guarantee of enforcement are important and deciding factors in the progress of economic development.[545] In addition, it is undeniable that the notion of "justice" can be regarded as a factor of economic development and an efficient legal system is essential for ensuring the effectiveness of laws in the economic domain and for protecting consumers and the environment.[546]

In Vietnam, the system of enforcement has been established based on the Constitution and relevant Resolutions of the CPV. Formally, Vietnam could be said to have a democratic form of government (as indicated by the official name Socialist Democratic Republic of Vietnam) with the State powers are unified and delegated to state bodies, which shall coordinate with and control one another in the exercise of the legislative, executive and judiciary powers (Art. 2 Para. 3 of the Constitution of Vietnam). However, the CPV is the leading force of the State and society (Art. 4 Para. 1 of the Constitution of Vietnam). Nevertheless, performances of all powers are in practice, to a certain degree, supervised by the CPV.[547] For example, for the purpose of development and improvement of Vietnam's legal system in the field of the protection the human rights and enhance the enforcement action, Resolution No. 48/NQ-TW required to develop and improve a consistent, comprehensive, viable, and transparent legal system with the focus on implementing the human and democratic rights and freedoms of the citizen.[548]

Vietnamese enforcement law for civil claims is set out mainly in the 2008 Civil Judgment Enforcement Law, was amended and supplemented by the LECJ and Decree No. 62/2015/ND-CP. Additional provisions relating to the enforcement are to be found in the Part 9 Chapter XXXIV (from Art. 482 to Art. 488) of the CPC 2015. Besides, the organizational structures, tasks and responsibilities of the private bailiffs were regulated under Decree No. 61/2009/ND-CP, which was amended and supplemented by the Decree No. 135/2013/ND-CP and Joint Circular No. 09/2014/TTLT-BTP-TANDTC-VKSNDTC-BTC. Thus, the civil judgment enforcement law of Vietnam currently prescribed scattered in many different legal documents, e.g., Codes, Laws of the National Assembly; Decrees of the Government; and Circulars of the Minister.

Nghia: Research on the Models of Civil Judgment Enforcement in Europe, Legal Professions Review, Vol. 1/2018, p. 75-76.

[545] *The Scientific Council of the UIHJ*: GCE, 2016, p. 139.

[546] *The scientific Council of the UIHJ*: GCE, 2016, p. 141.

[547] *Nguyen, Minh Tuan*: Haftung für staatliches Unrecht nach deutscher und vietnamesischer Rechtslage im Vergleich, PhD. Dissertation, 2012, p. 228.

[548] Section I. 1.

Vietnamese codifications of rules on enforcement tend to begin with an introductory chapter containing "general provisions". For example, the LECJ begins its first chapter with the general provisions, which mainly deal with prescription principles, orders and procedures for ECJs; the system of CJE organizations and enforcers; rights and obligations of JCs and JDs, and persons with related interests and obligations; tasks and powers of agencies, organizations and individuals in CJE activities. This is a similar trend to the great codifications of central European countries in the late 19th century. Therefore, the first type of the statutory regulation regarding the enforcement can be identified using the criteria, whether or not the regulation contains a general part applying to all enforcement procedures prescribed therein.[549] In fact, the enforcement law has a close relation with other laws, e.g., the CPC 2015, the Civil Code 2015, the 2013 Land Law (was amended 2018) the 2015 Criminal Law (was amended 2017), the 2014 Law on Marriage and Family, the 2012 Labor Code (was amended 2019), and the 2017 Law on State Compensation Liability, etc. The practice of law making in Vietnam has shown that each year, the Vietnamese National Assembly only promulgates or amends and supplements a certain number of laws. Meanwhile, the Law on Civil Judgment Execution cannot always be amended at the same time with other laws if it is not included in the same law-making program. Therefore, if a law is amended with content conflicts with the regulation of the enforcement law, the application of the law to enforce a court judgment will face many challengings.

Emphasising to the role of the legal system, Resolution No. 48-NQ/TW states that:

"The objectives for development and improvement of the legal system is to develop and improve a consistent, comprehensive, viable, and transparent legal system with the focus on the perfection of the legal regulations of a socialist-oriented market economy; on the building of a Vietnamese rule-of-law socialist state which is of the people, by the people, and for the people; on the basic renovation of law-making and implementing mechanisms; and on the enhancement of the role and effectiveness of the law in contributing to better social management, maintaining political stability, developing the national economy, international integration, building a clean and strong state, implementing the human and democratic rights and freedoms of the citizen, and making Vietnam a modern, industrialized country by 2020".[550]

Even though this Resolution has been issued for more than 14 years (since 2005), Vietnam`s legal system had been only slightly improved and is still incomprehensive

[549] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 5.

[550] Section I. 1.

and inconsistent.[551] After 10 years (2016) of implementation of Resolution No. 48-NQ/TW, Vietnam`s legal system was incompletely improved, unsynchronized, whereby effectiveness and feasibility have not met the practical requirements. Laws in several areas was lacking stability and predictability.[552] The enforcement law as well as the application of law in Vietnam was critically criticized for not only being inconsistent but also nonuniform and ineffective. A lack of adequate legal interpretation, the uncertainty and the deficiency of the legislation constitute obvious shortcomings in the Vietnamese legal system.[553] The quality of legal acts was not guaranteed and frequently amended or supplemented.[554] Therefore, they have only short lifespan or were soon to be canceled or replaced by new laws because of their ineffective implementation in practice.[555] The process of issuing legal documents took a long time, through many levels, delaying the promulgation and organizing the implementation. Law implementation is one of the weak points in the performance of the Resolution No. 48-NQ/TW, etc.[556] According to the evaluation and ranking of the World Justice Project Rule of Law Index 2019, relating to the rule of law development, Vietnam ranks 81st out of 126 countries and ranks 11th out of 15 in comparison for the Southeast Asia.[557] Here are some basic limitations relating to the enforcement of civil judgments:

aa) The right of enforcement has not yet been regulated as a fundamental right. Art. 2 Para. 1 of the Constitution of Vietnam regulates that

"The State of Vietnam is a socialist state ruled by law and of the people, by the people and for the people".

However, the LECJ and the Constitution of Vietnam have not yet defined the principle of affirming the execution of judgments as a step of concretizing the provisions of the Constitution relating to the protection of fundamental human rights and citizen rights. The Constitution of Vietnam should address that fundamental right, citizen rights, public benefits, and property rights infringed upon by the State will be ensured by the efficient, proportional, and just enforcement mechanisms. Therefore, the right to enforcement of a judgment should be set forth in the Constitution and should be defined as a constitutional principle, similarly the

[551] Report No. 35-BC/CCTP, Part 2. I. 7, p. 23.

[552] Conclusion No. 01-KL/TW, Section 1; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*, Commentary on Civil Judgment Enforcement Law, 2019, Art. 13, p. 146-154.

[553] *Do, Thi Mai Hanh*; Transplanting common Law Precedents: An Appropriate Solution for Defects of Legislation in Vietnam (part 1), Vol. 25, p. 89.

[554] See General Conclusions 1. (1) and (2).

[555] *Ha, Hung Cuong*: Improving the Legal System to Meet Requirements of the Construction of the Law-based Socialist State (2009), 139+140 Journal of Legislative Studies, p. 17, 20-22.

[556] Conclusion No. 01-KL/TW, Section 1.

[557] *The World Justice Project's research team*: World Justice Project Rule of Law Index 2019, p. 17-18.

principle of the law of the Federal Republic of Germany.[558] The constitutional guarantee of procedural legal protection, e.g., the BVerfG is taken from the substantively concerned fundamental right (e.g., Art. 2 (1) and Art. 14 GG) in connection with the rule of law (self-help prohibition, state monopoly on the use of force), includes the enforcement law, because otherwise the constitutional effective process would stop incompletely. The constitutional rule of law guarantees both the fundamental rights of the JC and the compulsory enforcement as the legal institution of civil procedure law and procedural law in general.[559]

It is true that, the rule of law state will become meaningless, if its legal system is inconsistent and ineffectively implemented, or if judgments and decisions of the courts cannot be enforced in practice. In fact, the postulates of the rule of law and the effectiveness of the judicial system are closely intertwined. There are several acceptable explanations for these opinions, including: (1) The right to the effective enforcement of judicial decisions within a reasonable period is an integral part of fair process as provided for by Art. 6 Para. 1 of the European Convention; (2) Enforcement of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Art. 6 of the Convention; (3) The right of enforcement becomes a key element of a fair trial, a conditional element to the effectiveness of Art. 6 Para. 1, and the pre-eminence of the rule of law;[560] (4) Finality of judgment without enforcement remains the mere suggestion; (5) The enforcement of judicial decisions, in turn, is at the center of the rule of law question; (6) To render justice is to enforce the satisfaction of the law-abiding party. The enforcement of judicial decisions, in other words, is an essential and unchangeable element of the rule of law.[561]

Based on the Resolution 3 of the 24th Conference was organized in Moscow in October 2001, on 9 September 2003, the Committee of Ministers of the European Council passed a "European Statute for the Bailiff" insisted that the rule of law principle is only a reality when it is applied in practice.[562] Other research results also indicate as follows:

"*Enforcement and constitutional law are in the first place connected to each other through the public character of the former*".[563]

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[558] *Nguyen, Van Nghia/Hoang, Thi Thanh Hoa*: Legal Mechanisms to Ensure the Enforcement of Civil Judgments and Rulings having taken Legal Effect, Jurisprudence Journal, 06 (217) 06-2018, p. 17.

[559] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 7.1, p. 81-82.

[560] ECHR, 27 June 2000, No. 32842/96, Nuutinen v. Finland.

[561] *The scientific Council of the UIHJ*, GCE, 2016, p. 140.

[562] *The Committee of Ministers of the CoE*: Introduction of the Recommendation Rec (2003)17 of 9 September 2003.

[563] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 12.

The nature of the relationship, the constitutional guarantee of access to justice covers enforcement and the right to efficient judicial protection requires full implementation rather than merely a binding judicial determination of the existence and extent of substantive rights. Another aspect relating to the debtor's property or the financial, or even human destruction of the debtor that are constitutionally protected.[564] The constitution not only protects the right of enforcement, but also limits the enforcement. The striking example is the German legal system, which displays the deep involvement of constitutional standards in the enforcement procedures. These requirements include the protection of property, the inviolability of the home, the personal freedom, human dignity, and the protection of the family, etc. For instance, Art 13 (2) GG states that a search of the home for the purpose of enforcement carrying out by the bailiff, in order to find out items to be levied upon, shall be allowed only with a judicial authorization.[565] The German system of compulsory enforcement complies with the conclusions of the GCE, which is:

"For all states the right to enforce all enforceable titles must be qualified as pertaining to human rights and as being a fundamental right".[566]

This means that the right of enforcement is thus linked to the right of ownership and the right of reparation, both these two rights are often protected not only by relevant international conventions, but also by the GG. At the EU level, after studying numerous cases of violation of Art. 6 Para. 1 of the ECHR relating to the length of the enforcement proceedings, the European Commission for the Efficiency of Justice also pointed out that the excessive length of enforcement proceedings will lead to a series of violations.[567] Those violations that may be mentioned are: (1) an infringement the right to a fair hearing (Art. 6 Para. 1 of the ECHR); (2) an infringement of the right to respect for property secured (Art. 1 of Protocol No. 1 of the ECHR), which is guaranteed by the enforcement phase; (3) a violation of an individual's right to a court established by Art. 6 Para. 1 of the ECHR; (4) and a violation of the individual's right to peaceful enjoyment of his or her possessions,

[564] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 12-13.

[565] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 13.

[566] *The Scientific Council of the UIHJ*: The Preamble of the GCE, 2016, p. 136.

[567] Hornsby v. Greece Judgment of 19 March 1997, § 40; Bourdov v. Russia of 4 September 2002, § 40; Kudla v. Poland, Application no. 30210/96; Guincho v. Portugal judgment of 10 July 1984; Roselli v. Italy, 15 February 2000; Marques Gomes Galo v. Portugal, 23 November 1999; Silva Pontes v. Portugal judgment of 23 March 1994; Botezatu v. the Republic of Moldova of 14 April 2015; Bendayan Azcantot and Benalai Bendayan v. Spain, decision of 9 June 2009, § 71; Kalinkin and others v. Russia of 17 April 2012 § 42; Pinto de Oliveira v. Portugal judgment of 8 March 2001; Metaxas v. Greece of 27 May 2004; Timofeyev v. Russia of 23 October 2003; Prodan v. Moldova of 18 May 2004; Romashov v. Ukraine of 27 July 2004; Pini and others v. Romania of 22 June 2004, § 183; Hristova and others v. Bulgaria of 26 June 2012, § 31; Zavodnik v. Slovenia of 21 May 2015; and Hohenzollern v. Romania judgment of 27 May 2010; etc. and CEPEJ (2018)26, p. 36-37.

where the judgment in his or her favor gives rise to a definite claim which must be considered a "possession" within the meaning of Art. 1 of Protocol No. 1 of the ECHR.[568]

bb) The enforcement law and other fields of law (procedural laws and substantive laws) are still deficient, overlapped or even sometimes mutual-conflicted. The Commission published an EU Justice Scoreboard on 27 March 2013 stated that

"An efficient legal system is essential for ensuring the effectiveness of laws in the economic domain and for protecting consumers and the environment".

Creditors must be able to obtain recognition of their rights and the enforcement procedures must be simple, fast, relatively uniform.[569] According to Art. 1 of the GCE

"Every creditor who is the holder of an enforceable title, whether judicial or extra-judicial, has the right to effective access to its enforcement in respect of his defaulting debtor, in strict compliance with the conditions laid down in the law and subject to the immunities from enforcement provided for in national and international law…".

(1) In Vietnam, at present, the enforced judgments and rulings of courts, as well as awards and decisions of commercial arbitrations, are defined in the LECJ and in other relevant laws, e.g., the CPC 2015, the 2015 Law on Administrative Procedures, the 2015 Criminal Procedure Code, the 2010 Law on Commercial Arbitrations, and the 2014 Law on Bankruptcy, etc. However, the profound lack of consistency between the LECJ and other laws has led to difficulties and confusions for the enforcement agencies in practice.[570]

(2) The provisions of the LECJ and its legal detailing and guiding documents are inconsistent and mutual-conflicted. The legal systems of Vietnam includes Codes, Laws, Ordinances, Decrees, Resolutions, Circulars and Precedents, (Precedents were supplemented from the 01 January 2017 that the date on which the CPC 2015 took legal effect).[571] In principle, the Decree of the Vietnamese Government has to fully conform with the contents and language of the law issued by the Vietnamese National Assembly.[572] However, the provision on identification, division and handling of common assets for judgment enforcement in the Decree No. 62/2015/ND-CP conflicts with the LECJ. For example, Art. 74 of the LECJ regulates that:

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[568] *Calvez, Françoise/Regis, Nicolas*: CEPEJ (2018)26, p. 36-37.

[569] *The Scientific Council of the UIHJ*, GCE, 2016, p. 141.

[570] See A. Chapter 1. IV. 2. a) ee).

[571] The CPC 2015, Art. 45 Para. 3 and Art. 517.

[572] The 2015 Law on promulgation of legislative documents of Vietnam, Art. 158 Para. 2 Sub-para. b.

"In case of failing to identify the proportion of asset ownership or land use rights of the JD in the common assets for judgment enforcement, the executor shall notify the JD and co-owners of assets or land use rights so that they reach an agreement on division of common assets or request *the court to settle the case according to civil procedure… The executor shall handle assets according to the court's decisions*".

According to the content of this article, judge is a person who has competence in identification, division and handling of common assets for judgment enforcement at the request of the executor. However, Art. 24 Para. 2 Sub-para. c of the Decree No. 62/2015/ND-CP regulates that:

"For property under joint ownership of spouses, *the executor shall determine the wife's share and the husband's share* in accordance with marriage laws and inform them. For property or land use right under joint ownership of a household, *the executor shall determine each member's share* at the time such ownership is established, or the time land is allocated, leased by the State or the time the land use right is certified by the State. The executor shall notify the household members of their share".

Thus, there is a serious inconsistence between the LECJ and the Decree No. 62/2015/ND-CP. The problem arises when applying the law to enforce the judgments in practice. The executor will apply the provisions of the LECJ issued by the National Assembly or apply the provisions of the Decree No. 62/2015/ND-CP issued by the Government? Decree of the Government in principle must conform with the Law of the National Assembly. Decree No. 62/2015/ND-CP hereby grants the executor the right to determine the ownership and the right to use property on behalf of the judge. This provision did not ensure the uniformity of the law, infringes upon the rights of the JDs and the rights of persons with interests and obligations related.[573]

It is much undoubted that such inconsistencies in the legal provisions did not ensure the principle of legal certainty. Meanwhile, the certainty of the law or the standards of legal safety is an important requirement of international law. In Germany, one of the most important requirements of the rule of law is the principle of the legal certainty.[574] Legal certainty has an important role and significantly affects the investment environment, business and economic development as well as public confidence in the nation's judiciary.[575] In October 2001, just after the attacks in New York, the European Ministers of Justice assembled in Moscow for the 24th

[573] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 73-74.

[574] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 64.

[575] *The Scientific Council of the UIHJ*, GCE, 2016, p. 124, 135-136.

Conference. The importance of a good and efficient system of enforcement plays in that, was once again emphasized in the Resolution 3 of this Conference as follows:

"The possibility of unifying the substantive and procedural laws relating to the enforcement of court decisions on a European level is of great concern… Efficient enforcement procedures are necessary in order to provide business interests with confidence when making investments".[576]

2. The rights and obligations of the enforcement agents and judicial officers

a) Standards of international regulations on the rights and obligations of the enforcement agents and judicial officers

First of all, in order to expedite the effective and efficient enforcement proceedings, state-employed enforcement agents should have proper working conditions, adequate physical resources, marital resources, sufficient human and support staff.[577] The enforcement agents and judicial officers should have the sole competence for enforcement of judicial decisions and other enforceable titles or documents and implementation of all the enforcement procedures provided for by the law of the State in which they operate.[578] This valuable suggestion may derive from the malfunction of the system of private bailiff in Croatia and in other transition countries, which undergone the reform of the enforcement proceeding from the public system into private bailiff systems or mixed/public-private systems. The study also indicated that several forms and aspects of enforcement proceeds should be exclusively exercised by the State.[579] Judicial officers are also ministerial officers who have a monopoly on seizures in Ohada zone, serving legal instruments and decisions, carrying out enforcements and drafting instruments prior to enforcement.[580]

Furthermore, judicial officers and enforcement agents should be authorized to perform secondary activities compatible with their role, safeguarding the rights of the involved parties and third parties, expediting the judicial process or reducing the workload of the courts. These secondary activities may include debt recovery; voluntary sale of movable or immovable property at public auction; seizure of goods; recording and reporting of evidence; serving as court ushers; provision of legal advice; bankruptcy procedures; performing tasks assigned to them by the courts; representing parties in the courts; drawing up private deeds and documents; and

[576] *Jongbloed, A. W.*: The Bailiff in Europe, Utopia or Reality? 2004, p. 305-306.

[577] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.7; *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 32.

[578] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 33.

[579] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 83-99.

[580] *The Scientific Council of the UIHJ*, GCE, 2016, p. 178.

teaching.[581] In the public sector, where enforcement agents are state employees, the state should ensure that their remuneration should be adequate commensurate with their level of training and experience especially the difficulties and challenges in their task.[582]

For the purpose of the implement judicial decisions effectively, fairly both for the parties and for society, the authorized agent or judicial officer must be required to proceed with the required enforcement measures and in accordance with the rules of professional ethics, except in the impediments as provided by law. They are also bound by professional secrecy.[583] If they abuse their position in order for enforcing wrongly the court decisions, they should be subject to adequate physical, e.g., disciplinary, civil and/or criminal proceedings.[584] They are responsible for the conduct of enforcement within their competences as provided by the domestic law. Their obligation is to perform their role whenever they are legally required to do. They should not be allowed to enforce the judgments in some cases of impediments or related by blood or marriage to a party or assigned disputed rights or actions in cases with which they are dealing.[585] Another obligation of the enforcement agent or judicial officer is that they must open a non-attachable account for depositing funds collected on behalf of clients and this account should be subject to inspection. In addition, taking out professional and civil liability insurance is legally mandatory of the enforcement agents who should be benefiting from social insurance cover.[586]

b) The rights and obligations of the enforcement agents and judicial officers in Vietnam

According to the LECJ, the enforcement agents include enforcement enforcers (junior enforcement enforcers, intermediate enforcement enforcers and senior enforcement enforcers); CJE verifiers (CJE verifiers, chief CJE verifiers and senior CJE verifiers); enforcement clerks/secretaries (enforcement secretaries and intermediate enforcement secretaries); private bailiffs and other CJE officials.[587]

Enforcement procedure is not only a conundrum for the enforcement organs, but also relating to human rights and fundamental rights so the enforcement of a civil judgment is always considered as one of the most important legal procedures of the

[581] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 34.

[582] *The Scientific Council of the UIHJ*, GCE, 2016, p. 177-178.

[583] The GCE, Art. 17.

[584] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.7.

[585] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 35.

[586] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 36.

[587] Decree No. 62/2015/ND-CP, Art. 1, 78; *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments, 2018, p. 90-101.

national judiciary.[588] In order to have a high-profiled profession of enforcement agents, these persons, e.g., enforcement enforcers, private bailiffs, or enforcement verifiers working for the enforcement organs or the private sectors play crucial roles. In Vietnam, enforcement executors are persons tasked by the State to enforce judgments and rulings prescribed in the LECJ. The executor has extensive powers, including the power to summon the parties to his office or the local People's Committee in order to execute the judgment or order; set deadlines within which the JD is bound to comply; and take applicable enforcement measures if the JD fails to comply in the prescribed timeframe and manner.[589] The executor may also request the court to clarify uncertain points in its judgment or order when they are heads of and deputy heads of CJE agencies.[590]

According to the Art. 20 of the LECJ, enforcement enforcers have following tasks:[591] (1) To promptly organize the enforcement of judgments or rulings assigned to them; to issue judgment enforcement decisions according to their competence. (2) To strictly enforce the contents of the judgments or rulings; to correctly apply legal provisions of the order of and procedures for judgment enforcement, ensuring the interests of the State and the rights and legitimate interests of involved parties and persons with related interests and obligations; and to strictly observe regulations on standard professional ethics of enforcers. (3) To summon involved parties and persons with related interests and obligations for judgment enforcement. (4) To verify assets and judgment execution conditions of JDs; to request concerned agencies, organizations and individuals to supply documents for the verification of addresses and assets of JDs or coordinate with concerned agencies in handling material evidence, assets and other matters related to judgment enforcement. (5) To decide on the application of measures to secure judgment enforcement and coercive measures to enforce judgments; to work out plans on coercive judgment enforcement; and to confiscate assets for judgment enforcement. (6) To request under the law, police offices to detain persons resisting the judgment enforcement. (7) To make written records of violations of the law on judgment enforcement; to impose administrative sanctions according to their competence; to propose competent agencies to discipline or administratively sanction violators or examine violators for penal liability. (8) To decide on the application of coercive measures to recover money and assets already paid to involved parties in contravention of law, collect judgment enforcement charges and other amounts payable by involved

[588] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, fn. 13, p. 63, 64.

[589] The LECJ, Art. 20.

[590] The LECJ, Art. 23.

[591] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, 25, p. 164-165.

parties. (9) To use support tools while on duty under the Government regulations. And (10) To perform other tasks assigned by heads of judgment enforcement agencies.

When performing their tasks or exercising their powers, enforcers shall comply with the law and take responsibility before law for judgment enforcement and have their lives, health, honor, dignity and prestige protected by law.

In fact, executors do not have enough necessary competence regarding the enforcement.[592] For example, Art. 79 to Art. 83 of the LECJ stipulate that if the JDs holding money, valuable papers or a third party holding their money and valuable papers, the executors shall issue a decision to enforce the judgment. This provision in many cases not feasible because the JDs have money, gold, silver, or precious metals, gems store, but according to the enforcement law of Vietnam, executors who are not entitled to explore, body search, or discover places to seize money and assets, which are gold, silver, or precious or gemstones.[593] Therefore, the court judgment was not enforced effectively in practice.[594]

Furthermore, executors only have the right to request, e.g., require banks or other relevant organs to provide account information of the JD, if the bank or other organs do not provide or provide untimely, the law has not provided specific sanctions for non-compliance with the requirements of the executors. Therefore, the judgment execution is difficult and often delayed.[595]

In addition, agencies, organizations and individuals holding information or managing assets and accounts of JDs shall provide information upon *requests of JCs* or their authorized representatives within 5 working days after receiving such requests, except failure due to force majeure circumstances or objective obstacles (Art. 44 Para. 6 Sub-para. c of the LECJ). Meanwhile, the 2010 Law on Credit Institutions, amended and supplemented 2017 regulates that credit institutions and foreign bank branches shall refuse the investigation, blocking, seizure or transfer of deposits of clients, unless *it is so requested by competent state agencies under the law or so consented by clients*.[596] And Art. 10 Para. 7 of the Decree No.

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[592] *Nguyen, Van Nghia*: Executors - What Powers do They Need? Democracy and Law Journal, Vol. 7/2008, p. 37-38; *Nguyen, Van Nghia/Pham, Quoc Nam*: Policies and Legislation on civil judgment enforcement in some countries and the ability to apply in Vietnam, Democracy and Law Journal, Vol. 03/2019, p. 30; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, 25, p. 167.

[593] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 80, p. 438.

[594] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 83.

[595] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 44, p. 259.

[596] Art. 10 Para. 3.

117/2018/ND-CP stipulates about the power to sign application form for provision of client information as follow:

"In the field of civil judgment enforcement, the application form for provision of client information must be signed by *the heads or deputy heads of judgment enforcement authorities, executors/bailiffs* that are enforcing judgments as prescribed by the law on judgment enforcement".[597]

Thus, the conflict between the provisions of the enforcement law and the law on credit institutions has prevented the JCs from exercising the right to request information. If the JC is an individual, his or her own in order to require the bank or credit institution to provide the account information of the JD is almost ineffective in practice.[598]

In addition, Art. 162 Para. 6 of the LECJ regulates that failing to comply with enforcers' request for supply of information and documents related to assets handled for judgment enforcement without plausible reasons is one of the acts of administrative violation in CJE. However, lack of the regulations on the persons who have the sanctioning competence as well as lack of the levels of sanction leading to this article is ineffective in practice.[599]

In Vietnam, the CJE system, except for the military judgment enforcement system, comprises central CJE administration affiliated to the Ministry of Justice; CJE authorities of provinces; and CJE authorities of districts.[600] Central CJE administration/the General Department of CJE is an affiliate of the Ministry of Justice, which assists the Minister of Justice in the state management of CJE, the state management of administrative judgment enforcement in accordance with the Law on Administrative Procedures and relevant legislative documents.[601] The Central CJE Administration has enforcement verifiers (CJE verifiers, chief CJE verifiers, senior CJE verifiers); civil servants and other CJE officials. Enforcement enforcers are only appointed to the CJE authorities of provinces; and CJE authorities of districts. The Central CJE Administration has the task to professionally guide, direct and retrain enforcers, verifiers and other civil servants engaged in CJE work.[602] Enforcement enforcers are civil servants and their salary is paid by the State. Enforcement officers, enforcement verifiers, enforcement secretaries and other

[597] This Decree comes into force from 01 November 2018.

[598] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 67, p. 379-380.

[599] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 163, p. 730-732.

[600] Decree No. 62/2015/ND-CP, Art. 52.

[601] Decree No. 62/2015/ND-CP, Art. 53 Para. 1.

[602] The LECJ, Art. 167 Para. 1 Sub-para. dd.

officials and other workers involved in CJE shall receive salaries, responsibility allowance and other benefits prescribed by law.[603] However, generally, salary and allowances paid for executor are low and not enough to meet the requirements of the executor and their families.[604] Their salary depends mainly on the working time (work experience), does not depend on the level of training (bachelor, master or doctorate). This is inconsistent with the provisions of international standards on the salaries of bailiffs/enforcers in the one hand and discourage candidates with high levels of education working in the field of civil judgment execution in another hand.[605]

Meanwhile, private bailiffs are not civil servants working in the private sectors, e.g., the private bailiffs' offices. Their responsibilities are regulated in the Resolution on an implementation of institutions on bailiffs and other legal documents, e.g., Decree on the organization and operation of bailiffs under the pilot scheme in Ho Chi Minh City.[606] The private bailiffs are responsible for four main areas, i.e., document delivery, certification of documentary evidence, verification of judgment enforcement conditions and application of coercive measures to enforce judgments. The remuneration of the private bailiffs is paid by the bailiff's office from the enforcement fees. Currently, there are so enormous difficulties and challenges occurred relating to the powers and responsibilities of the private bailiff, especially the limitations on the verification of judgment enforcement conditions and application of coercive measures to enforce judgments.[607]

c) Limitation on the rights and obligations of the enforcement agents and judicial officers in Vietnam

According to the Vietnamese law, currently, the judgments and decisions of courts are enforced by the judgment enforcers (Art. 17 Para. 1 of the LECJ) and the private bailiffs.[608] Executors are the civil servants, appointed by the State who are paid salaries and other benefits from the state budget. Meanwhile, bailiffs are also appointed by the State, granted powers to enforce the judgments and decisions of the court but they are not the civil servants.[609] However, there are still major drawbacks relating to the role, status, power, responsibilities, rights and obligations of the

[603] Decree No. 62/2015/ND-CP, Art. 78 Para. 1.

[604] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, 25, p. 169.

[605] See B. Chapter 2. I. 2. a); *Nguyen, Van Nghia*: Some Issues about Law Bachelor Training with the Demand of Judicial Renovation in Civil Judgment Execution, Democracy and Law Journal, 2007, p. 34-35.

[606] Resolution No. 107/2015/QH13 and Decree No. 61/2009/ND-CP.

[607] *Nguyen, Van Nghia*: The Development of the Private Bailiff Profession in Vietnam and new legal issues arising, http://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2249, 2018.

[608] Resolution No. 107/2015/QH13.

[609] Decree No. 135/2013/ND-CP, Art. 2 Para. 2.

enforcement agents or private bailiffs in Vietnam in comparison to the international requirements and such that in Germany. The enforcement law of Vietnam has not specified all the necessary powers for the executor to perform the task of judgment enforcement. Therefore, the executor has not granted full competence for the purpose of judgment enforcement, below are some typical examples:

(1) Arresting and detaining persons. Firstly, the right to arrest and detain persons who oppose the enforcement of the judgments, fail to provide the assets' information or attempt to interfere in the course of enforcing the judgments. The arrest of the JDs if they fail to provide or providing false information about the assets that has not yet been handed to the judgment enforcers as well as a competent state agency or any competent individuals. If they breach the obligation to provide information about the assets, the level of the fine for them is also not strict enough to deter or prevent them.[610] Secondly, criminal punishments for "failure to serve a judgment" are also mild, not serve enough and difficult to apply in practice, because this regulation is inappropriate and infeasible. Previously, Art. 304 of the 1999 Criminal Code of Vietnam regulates that:

"Those who deliberately refuse to execute the courts judgments or decisions which have already taken legal effect, *though necessary coercive measures have been applied*, shall be subject to the non-custodial reform for up to three years or a prison term of between six months and three years".

This regulation was amended and provided in the Art. 380 of the 2015 Vietnamese Criminal Code and then the Code of 2017, as follow:

"1. If a person who is capable of but *fails to serve a judgment or decision of the court* which has taken effect even though *enforcement measures have been taken* as prescribed by law or *an administrative penalty for the same offence has been imposed*, such person shall face a penalty of 03 - 24 months' imprisonment. 2. This offence committed in any of the following cases shall carry a penalty of 02 - 05 years' imprisonment: a) The offender resists the bailiff or a law enforcement officer; b) The offence involves deceitful methods; c) The offender liquidates or hides his/her property; d) The offender might also be liable to a fine of from VND 5,000,000 to 50,000,000".

In the past, there may have been many cases where these sorts of crime were committed, but the criminal prosecution for these crimes were almost nonexistent. In large number of cases, the executors compiled dossiers and required the procuracy to prosecute, but the dossiers were returned for failing to clearly determine "the involved parties' deliberately refuse to execute the courts judgments or decisions".

[610] See A. Chapter 1. II. 2.

One of the convincing reasons was that the provisions of the enforcement law in determining the debtor's behavior "fails to serve a judgment or decision of the court" was unclear and it was also difficult to determine what was "necessary coercive measures had been applied"?[611] Moreover, although Art. 380 has provided the necessary sanctions if the JDs do not comply with the judgment or decision, the sanctions applied in this article are not harsh punishment, do not guarantee the necessary deterrence. With the judgments and decisions that must be executed with huge sums of money, e.g., hundreds of billions of VNDs, thousands of billions of VNDs and even tens of thousands of billions of VNDs in fact that have ever happened in Vietnam, the sanctions mentioned above may be meaningless.[612] The JD may not pay much attention to these sanctions because either the amount of fine is low, or the time of detention if criminal prosecution is not enough deterrence in comparison to the value of assets they must enforce. In addition, the application of criminal sanctions mentioned above does not bring benefits to the JCs, even if it can be counterproductive. Because if the JD is forced to serve his imprisonment penalty, his or her ability to pay money under the judgment or civil decision may be even more difficult, pushing the execution to a higher level of difficulty, affecting the recovery of property, more difficult to restore the rights and benefits of the JC.[613]

Meanwhile, according to the German law, in order to force the debtor to provide information about his/her assets, he/she shall be arrested by a bailiff if he/she has failed to appear at the meeting scheduled for the provision of the information on his financial circumstances and assets without having excused himself, or who refuses to provide the information on his financial circumstances and assets pursuant to § 802c ZPO without citing any grounds.[614] The JC has the right to interrogate the JD for the purpose of collecting information about the debtors' assets.[615] The arrest can only be made if there is a good reason to fear that without an arrest, the execution of the judgment will be more difficult or impossible.[616] Some important reform proposals relating to the power and competence of the bailiff were conducted in 2006, e.g., significant reform the regulations on the general powers of the bailiffs, additional competence for the bailiff with the purpose of the effective and efficient enforcement.[617] From the invaluable experience of the Federal Republic of Germany,

[611] *Nguyen, Tuan An*: Improving the Law on the Handling of Violations of Law in the Enforcement of Civil Judgments in Vietnam Currently, PhD. Dissertation, 2014, p. 101.

[612] Report No. 01/BC-BTP, Section II. 3.2, p. 5; *Ha, Cam Phong*: 10 large economic cases, large corruption cases and typical cases were brought to trial in 2018, 2019.

[613] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 83-85.

[614] § 802g ZPO which has been applicable since 01.01.2013.

[615] *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 8, p. 23.

[616] *H. J. Snijders, trans. by Benjamin Ruijsenaars*: Access to Civil Procedure Abroad, 1996, p. 305.

[617] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 4.11, 4.12, 4.13, p. 38-39.

the Vietnamese law should grant the executors are entitled to arrest the JD on the basis of an arrest warrant issued by the court if he/she against the enforcement of judgments or fail to provide information about his/her assets without providing reasonable reasons. In addition, it is necessary to amend the criminal code in the direction of requiring more severe sanctions for criminals that failure to serve a judgment.[618]

(2) The right to have access to housing, buildings and land. The enforcement enforcers have the right to have access to housing, buildings and land for the purpose of executing judgments. The LECJ has not yet clearly defined these rights for the enforcement executors. In the course of distraining the judgment execution assets and accessing the assets of the JD, the LECJ currently has a severe limitation. Vietnamese law grants to the executors have the right to distrain the locked houses and distrain the locked or packed objects without the debtor's consent. Art. 93 Para. 1 and Art. 95 Para. 4 of the LECJ regulates that upon distraint of locked or packed objects or distraint of locked houses, enforcers shall request JDs or current users or managers of these objects to unlock or unpack them. If requested persons fail to do so or are intentionally absent, *enforcers shall themselves or hire other individuals or organizations to do so* in the presence of witnesses. JDs shall bear any damage caused by the unlocking or unpacking. Meanwhile, Art. 22 Para. 2, 3 of the Constitution of Vietnam provides that:

"2. Everyone has the right to inviolability of his or her home. No one may enter the home of another person without his or her consent. 3. The search of homes shall be prescribed by a law".

It is undoubtedly that unlocking or unpacking of objects of the JDs or entering the home of the JDs without his or her consent is related to the property rights and the personal rights of the debtors. These rights must be decided by the judges in pursuant to the Art. 2 Para. 2 of the Law on Organization of People's Courts 2014 of Vietnam, which is

"In the name of Vietnam, courts shall … make decisions regarding property rights and obligations and personal rights".

[618] *Nguyen, Van Nghia*: Executors-What Powers do They Need? Democracy and Law Journal, Vol. 7/2008, p. 37-38; *Nguyen, Van Nghia, (penname Thi Lien Mai*): Independence Enhancement in the Operation of Judgement Execution Bodies, Democracy and Law Journal, 2006, p. 43; *Nguyen, Van Nghia*: Responsibility for Providing Information about the Assets of the Judgment Debtor in the Enforcement of Civil Judgments in Europe and in Germany, Legis. No. 01/2018; *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 83, 153; *Le, Vinh Chau*: Improving the Efficiency of Civil Judgment Execution should be associated with raising the qualifications, capacity and ethics of the Judgment Enforcement Officers, http://tcdcpl.moj.gov.vn/qt/tintuc/Pages/thi-hanh-phap-luat.aspx?ItemID=121.

In Germany, relating to the inviolability of the home, Art. 13 (1) GG stipulates that the home is inviolable. Under Art. 13 (2) GG, searches must, as a matter of principle, be authorized only by a judge. This fundamental right is guaranteed in the course of enforcement. Therefore, all forms of enforcement that affect Art. 13 GG must be strictly and formally provided in the enforcement law. Both GG and the Constitution of Vietnam protect the inviolability of the home. However, the regulation on protecting the inviolability of the debtor's residence under the constitutional law, courts constitution act, and the law on enforcement in Germany is stricter, extremely logical and completely consistent. By contrast, in Vietnam there is an inconsistency between the Law on Organization of People's Courts and the LECJ in providing the right of the judges and the right of executor concerning to protecting the inviolability of the debtor's residence.

(3) The right to search for persons, places of residence, places of hiding property and documents of the JDs. The Vietnamese law on enforcement has not yet granted the executor the right to search for persons, places of residence, places of hiding property and documents of the JDs in case of necessity. Art. 80 to Art. 83 of the LECJ stipulates that if the JDs have money or valuable papers held by them or by a third party, the executor shall issue a decision to enforce the judgments. However, these provisions in many cases are not feasible in practice because the JDs have money, gold, precious metals, gems that are stored or carried on the person, but the enforcement law of Vietnam has not yet handed the executor the right to search the person, scrutinize the places of hiding property to seize money or property for judgment execution. Meanwhile, habits and psychological use of cash of most Vietnamese people are still popular; a number of obstacles hindering or restricting the use of non-cash payment, e.g., online fraud, the level of commercial civilization, the psychology of fear of accessing new technologies, being afraid of publicizing income and business collecting and using cash for non-transparent purposes, etc.[619] In general, non-cash payments have had positive developments, but payment in cash in the economy remains large; cash ratio/total means of payment is still high.[620]

These drawbacks of the enforcement law along with the practice of the economy with the habit of using cash have significantly reduced the efficiency and effectiveness of the enforcement due to the fact that the executor is not fully granted necessary competences for the purpose of enforcement.[621] The law on enforcement of Vietnam should be supplemented with provisions allowing the executors the right to

[619] *Hoang, The Anh*: Supervision of Civil Judgment Enforcement, PhD. Dissertation, 2015, p. 139.

[620] Report No. 18/BC-NHNN, Section II. 6.

[621] *Le, Anh Tuan*, Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 83; *Nguyen, Van Nghia*, Executors-What Powers do They Need? Democracy and Law Journal, Vol. 7/2008, p. 39; *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 162.

body searches and search for places where property and documents are hidden during the judgment execution process and for the purpose of enforcement. However, in order to avoid abusing this power by executors, it is also necessary to stipulate the strict sanctions that the executor must bear if there is a violation like the sanctions imposed on the police.[622]

3. Qualification requirements of the enforcement agents and judicial officers

a) International requirements on the qualifications of the enforcement agents and judicial officers

The high level of legal qualification which is one of the most important factors affecting on the quality of the enforcement. Therefore, judicial officers and enforcement agents must be required to comply with obligations regarding initial training and lifelong training.[623] In fact, enforcers are entrusted the various tasks relating to the enforcement procedures, not only the main task of enforcing enforceable titles, but also carrying out a broad range of "secondary activities", e.g., debt recovery, voluntary sale of movable or immovable property at public auction, seizure of goods, recording or reporting of evidence, and bankruptcy procedures.[624] Therefore, they need all the initial or in-service theoretical and/or practical training, which should be geared to the needs revealed by the practical performance of the various enforcement tasks. In order to complement their initial theoretical training, all candidates who may become enforcement agents should perform a work placement with a serving agent. These placements, which should be of a reasonable length for candidates to be able to acquire the basic practical knowledge needed for them to perform their future tasks, enable them to be placed in real-life situations and faced with the realities of the profession. At the end of this training, professional examinations could be held for the purpose of checking the requisite knowledge.[625]

The member States should set up a system of in-service training for both serving enforcement agents (for whom such training should be compulsory) and employees (to whom the law allows enforcement agents to delegate some of their tasks).[626]

Enforcement agents should also be required to follow compulsory continuous training or voluntary courses in order to achieve a high level of vocational training. There are three primary reasons leading to high level of vocational training, including the complexity of the rules governing civil enforcement procedures; the

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[622] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, 25, p. 167; Art. 80, p. 437; Art. 116, p. 551; *Nguyen, Van Nghia*: Executors - What Powers do They Need? Democracy and Law Journal, Vol. 7/2008, p. 38-41.

[623] The GCE, Art. 18.

[624] *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 3.

[625] *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 18.

[626] *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 19.

diversity of the tasks assigned to the enforcement agents, the trust and the respect that they must inspire in the public. Laws may change in comparison to the practices and procedures in the enforcement process and new environments may also require new knowledge, therefore the continuation of education and training is critical even after the initiation of professional activities.[627] The level of training of enforcement agents must be aligned with that of the other legal profession, e.g., lawyers, notaries, or judges. In the future, the training programmers, e.g., conflict management techniques and in mediation should be trained for the enforcement agents in their practical implementation.[628]

The initial and continuous training could comprise the principles and objectives of enforcement; professional conduct and ethics; stages in the enforcement process; the appropriateness, organization and implementation of enforcement measures; the legal framework; role-playing and practical exercises as appropriate; assessment of trainees' knowledge; and international enforcement of judicial decisions and other enforceable titles.[629] In addition, coordination of training bodies and having appropriate training curricula is necessary. For example, different service-providers, e.g., universities or professional training or public-partnership should be co-operated, and the State should provide the variety of training facilities to the professional organizations. Other specific bodies entirely given over to training for the enforcement professionals should be encouraged to establish.[630]

b) Vietnamese laws on the qualifications of the enforcement agents and judicial officers

After graduating from the University of Law, if someone who wants to be appointed as an executor, firstly, the candidate must apply a job in an enforcement agency. They have to take part the examination to recruit civil servants.[631] If he/she passes this examination, he/she will be subject to the probation regime under the Government's regulations.[632] The probation time is 12 months for persons recruited to be reserve civil servants if they have a suitable bachelor's degree. If the probationer meets the requirements of the rank under probation, he/she will propose in writing the civil servant-managing body to issue a decision on the appointment and salary payment for the recruited civil servant.[633] These civil servants have to work for the enforcement agencies at least 3 years, and then if the enforcement

[627] *Uzelac, Alan*: Improving Efficiency of Enforcement Proceedings, p. 16.

[628] *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 17.

[629] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 28.

[630] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 27; *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 17.

[631] The 2008 Law on Cadres and Civil Servants of Vietnam, Art. 37 Para. 1.

[632] The 2008 Law on Cadres and Civil Servants of Vietnam, Art. 40.

[633] Decree No. 24/2010/ND-CP, Art. 23.

agencies need more executors, they will be considered for attendance in civil judgment enforcement profession classes. The vocational practical study program shall comprise the initial theoretical training and the vocational practical skills. This initial training lasts about 6 months at the Judicial Academy, which is a unit under the Ministry of Justice.[634]

After that he/she may be appointed to become an enforcer by the Justice Minister if he/she passes the examination for selection of junior executors. Article 56 of the Decree No. 62/2015/ND-CP provides that enforcement enforcer candidates shall have to take an examination in accordance with regulations of the LECJ. The Ministry of Justice shall hold examinations to recruit enforcement enforcers.

According to the Art. 18 of the LECJ, it depends on the ranks of the enforcers, the criteria for appointment of enforcers are collectively different. First, all types of enforcers must meet the common requirements, which are Vietnamese citizens who are loyal to the Fatherland, honest, non-corrupt, possess good ethical quality and a law bachelor or higher degree, and have a good health to fulfill assigned tasks may be appointed as enforcers.

Besides these criteria, persons may be appointed as junior enforcers if they satisfy the following conditions: having been engaged in legal work for 3 years or more; having been trained in the CJE profession; and passing the examination for selection of junior enforcers. Persons may be appointed as intermediate-level enforcers if they satisfy the following conditions: having worked as junior enforcers for 5 years or more; and passing the examination for selection of intermediate-level enforcers. Similarly, persons may be appointed as senior enforcers if they satisfy the following conditions: having worked as intermediate-level enforcers for 5 years or more; and passing the examination for selection of senior enforcers.

Otherwise, incumbent judges, procurators and investigators who are transferred to CJE agencies or those who have once acted as enforcers but are now assigned to perform other tasks and fully satisfy the common criteria may be appointed as enforcers of equivalent ranks without having to pass an examination for selection of equivalent enforcers. In addition, in special cases due to the demand for appointment of heads and depute heads of CJE agencies, persons who fully satisfy the common criteria and have been engaged in legal work for 5 years or more; 10 years or more; or 15 years or more may be appointed as primary-level, intermediate-level or high-level enforcers, respectively, without having to pass an examination for selection of equivalent enforcers.

[634] *Nguyen, Van Nghia*: Some issues about law bachelor training with the demand of judicial renovation in CJE, Democracy and Law Journal, 2007, p. 18-44.

In order to meet the requirements of taking part in the examination for selection of intermediate-level enforcers and the examination for selection of senior enforcers, candidates must satisfy not only the above criteria must also participate in professional training courses for enforcers in the respective ranks of enforcers. This professional training course often lasts for around 6 weeks. The contents of this course shall be determined by the Ministry of Justice, focusing on the special topics on judgment enforcement and difficult tasks. For example, the decision of the Vietnamese Ministry of Justice on unveiling the plan for training and fostering officials and public employees regulated that the time frame for training and fostering junior enforcers who will participate in the examination for selection of intermediate-level enforcers is 6 weeks.[635]

There are major limitations on the practical training for the enforcers in Vietnam. First, the reasonable length of practical training course for enforcers is too short. Until the time of writing the present paper, the 18th courses of the vocational practical training for enforcers have been carried out and the 19th course of the vocational practical training is being carried out in the year 2019. The training time for the first two courses was 9 months and then from the third courses the training time was shortened to 6 months, including basic theoretical studying and practical performing and time for the final examination. The training time for the professional training courses for intermediate-level enforcers or senior enforcers is only 6 weeks. The first professional training course for senior enforcers has just opened at the end of 2016, according to the decision on promulgating the program of fostering senior enforcers.[636] In Vietnam, the executor training program only focuses primarily on initial training, while the continuing education is being limited. There may not a suitable program to continue training designed for every level of executor after several years of working as in some countries, e.g., in Kazakhstan every three years, in Slovenia every four years.[637] Another drawback is the lack of the lecturers or instructors who have deep knowledge of enforcement not only theoretical but also the practical knowledge and methods.[638] Many teachers are part-time jobs and do not have enough foreign language knowledge (e.g., English, German or other languages) to read the foreign or international enforcement documents as well as to teach the international enforcement laws. The training program often lacks practical implementation or a lack of lessons in conflict management techniques, international

[635] Decision No. 2693/QD-BTP.

[636] Decision No. 105/QD-BTP dated 21 January 2016 of the Minister of Justice.

[637] *O'Sullivan, Kim/Bradautanu, Veronica*: Enforcement of Judgments in SEE, CIS, Georgia and Mongolia, 2016 (18) 2, p. 214.

[638] *Nguyen, Van Luyen*: Research on Real Situation and Development Demand of Executors and Training Program Development according to Demand of Judicial Reform, 2010, p. 101-115.

enforcement, foreign enforcement experiences and in mediation, which will need for the enforcers to perform their tasks in the future.

Therefore, Vietnam should focus more on improving the quality of vocational training programs for the executors and bailiffs, because professional training program for the judgment enforcers plays a decisive role in deciding the effectiveness and efficiency of the judgment enforcement proceedings.[639] Evaluating the crucial role of educating the enforcement agents, the Resolution 3 of the Conference was organized in Moscow,[640] addressed that training bailiffs is an important to ensure that they carry out their important tasks fairly, impartially, efficiently and transparently.[641]

4. Ethics and professional conduct of the enforcement agents and judicial officers

a) International requirements of the ethics and professional conduct of the enforcement agents and judicial officers

There is a parallel relationship between the economic globalization and the proliferation of international courts and tribunals. The downside of economic globalization has been affected significantly on judges, lawyers and enforcement agents. It must be noted, though, that an inadequate enforcement system will be a drain on the effectiveness of any justice system, no matter how good it is, and on the economy as a whole.[642] Therefore, issuing the ethics and professional codes of conduct is necessary in order to help them to consolidate judicial systems and in doing so strengthen the rule of law is essential, especially in transition or developing countries.[643] The GCE requires States take measures to define the rules of the professional ethics of enforcement agents and judicial officers.[644] The professional standards of enforcement agents in these codes of conduct depends on the acts of enforcement or different enforcement periods. When enforcement agents or judicial officers provide information to the parties involved concerning the enforcement procedure, a piece of information should be based on the grounds of action, transparency and clarity of costs, etc. In addition, enforcement agents should express their social role and perform their duty of advice when they give notice to the parties. There are some professional ethics should be well attended by the enforcement

[639] *Nguyen, Van Nghia*: Some Issues about Law Bachelor Training with the Demand of Judicial Renovation in CJE, Democracy and Law Journal 2007, p. 31-44.

[640] The 24th Conference was Organized in Moscow in October 2001 by the European Ministers of Justice just after the attacks in New York.

[641] *The CEPEJ*: Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002, Principle I. 3. ii.

[642] *O'Sullivan, Kim/Bradautanu, Veronica*: Enforcement of Judgments in SEE, CIS, Georgia and Mongolia, 2016 (18) 2, p. 225.

[643] *Terhechte, Jörg Philipp*: Judicial Ethics for a Global Judiciary-How Judicial Networks Create their own Codes of Conduct, Vol. 10 No. 04, p. 501-514.

[644] Art. 19.

agents or judicial officers, e.g., behavior, professional secrecy, ethical criteria governing the choice of actions, etc. Furthermore, the factor of smooth enforcement is one of the most crucial elements in the enforcement proceedings, therefore the requirement of predictability and proportionality of costs and lead-times, cooperation between enforcement services, etc., should be strictly regulated in the professional codes of conduct. Finally, the rules of the professional ethics should provide more procedural flexibility for enforcement agents, e.g., the autonomy of enforcement agents.[645]

In the Ohada zone judicial officers are persons who have a monopoly on seizures and have solely competent to serve legal instruments and decision, carry out enforcements and to draft instruments prior to enforcement, e.g., final demands and notices.[646]

According to the research paper, although judicial ethics are extremely important characteristics of the judicial officers, international laws still lack provisions of judicial conduct.[647]

b) Vietnamese law of ethics and professional conduct of the enforcement agents and judicial officers

For the purpose of restricting and preventing executors from violating the laws in the course of executing civil judgments, Art. 21 of the LECJ has banned enforcer to do the prohibitions on civil servants as prescribed by laws, e.g., the 2008 Law on Cadres and Civil Servants of Vietnam makes a list of prohibitions on cadres and civil servants, i.e., shirking responsibility or refusing to discharge assigned tasks; sowing factionalism and disunity; quitting jobs or going on strike without permission; illegally using the assets of the State and people; etc.[648] The 2008 Law on Anti-corruption of Vietnam also makes a list of things must not be done by public servants, including executors, i.e., embezzlement, taking bribes, abuse of one's position or power for illegal appropriation of assets, etc.; threatening, taking vengeance on, victimizing or revealing information about informers, etc.[649] Enforcers are not allowed to provide advice to involved parties and persons with related interests and obligations, leading to unlawful judgment enforcement; to intervene illegally in the handling of cases subject to judgment enforcement or abusing one's influence to affect persons responsible for judgment enforcement; to use illegal material evidence, money and assets involved in judgment enforcement; to enforce

[645] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 38.

[646] *The Scientific Council of the UIHJ*: GCE, 2016, p. 178.

[647] *Terhechte, Jörg Philipp*: Judicial Ethics for a Global Judiciary-How Judicial Networks Create their own Codes of Conduct, Vol. 10 No. 04, p. 504-505.

[648] Art. 18-20.

[649] Art. 2 and Art. 8.

judgments related to their own rights and interests and those of the following persons, including their spouses, blood children or adopted children; their blood parents, adoptive parents, paternal or maternal grandparents, uncles, aunts, and blood siblings or those of their spouses, nephews and niece whose blood parents are their blood siblings; to use their enforcer cards, uniforms and badges or support tools in conducting activities beyond their assigned tasks and vested powers; to harass or trouble individuals, agencies or organization in the course of judgment enforcement; and to enforce intentionally judgments or rulings in violation of their contents; delaying or lengthening the enforcement of judgments assigned to them without adequate legal grounds.

In Vietnam, enforcement enforcers/executors are civil servants therefore they must comply with the rules of professional ethics in their job in the enforcement proceedings. The Decision No. 51/2002/QD-BTP makes a list of ethical standards of the executor, including: (1) Always love their job, not afraid of difficulties, fulfill all tasks assigned; to protect the interests of the State, the legitimate rights and interests of organizations and individuals, and to protect the socialist legality. (2) Effort to study to improve the level of theory and professional. (3) Be active in the enforcement of judgements, do not neglect or seek to delay the enforcement; education and persuasion the parties involved are priority methods; choosing fair enforcement measures; do not violate the legitimate rights and interests of the involved parties and the common interests of the society. (4) Do not abuse of the work position for private benefits; not allow using the money collected from judgment enforcement and illegally using material facilities of judgment enforcement; failing to implement cases related to the interests and obligations of their own or their relatives; unaffected by illegal interference in enforcement activities; not doing illegal things. (5) Have behaved civilized, polite, not bureaucratic, bossy, harassing, troublesome with the parties involved. (6) Unity, honesty, mutual support and cooperation with colleagues; self-criticism and listening to, comments, criticism of colleagues; suggestions, criticism with colleagues in the spirit of construction, objectively, in the right place at the right time. (7) Costume polite, exemplary discipline, rules and regulations of the agency; not allow drinking beer, alcohol or stay drunk, alcohol during working hours and during the meeting the parties involved. (8) Having a simple lifestyle and integrity; advocacy and education for family members to build a cultural lifestyle, sense of respect and observance of law.

It is accepted that smooth enforcement or procedural flexibility is among the essential requirements for the ethics and professional conduct, according to the international laws, however, some ethical standards or rules of professional ethics were not mentioned in the codes of ethics and professional conduct of Vietnam, e.g.,

the autonomy of enforcement agents; co-operation between enforcement services or lead-times; etc.

II. Judicial authorities

1. The role of judges in the enforcement of judicial decisions in civil matters

a) International standards on the role of judge in the enforcement of judicial decisions in civil matters

Judge plays a crucial role in the enforcement. Thus, Art. 22 of the GCE stipulates:

"Only a judge can rule on disputes arising from the enforcement and order the measures necessary for its implementation at the request of one of the parties or of the enforcement agent. The judge to whom an application is made by the debtor, an interested party, the judicial officer or enforcement agent may suspend or cancel an enforcement measure should a sound reason justify such".

In principle, the decision to be enforced must be precise and clear in determining the obligations and rights engaged in order to avoid any obstacle to effective enforcement.[650] Take two examples in the case of Privalikhin vs. Russia on 12 May 2010 (Application No. 38029/05)[651] and the case of Raylyan v. Russia on 15 February 2007 (Application No. 22000/03).[652] Concerning to the role of judges in these examples, the court reaffirmed that in order to decide if the execution delay was reasonable, the court will look at how complex the enforcement proceedings were, how the applicant and the authorities behaved, and what the nature of the award was.

For judges to fulfill their tasks, the judiciary should be entrusted with the hereunder missions concerning enforcement: (1) An appeal to a judge if the enforcement is not initiated or is delayed by the relevant bodies; a judge should also be involved when the fundamental rights of the parties are concerned; in all cases, the judge should have the power to grant just compensation; (2) An appeal or complaint to a judge if there is any abuse in the enforcement procedure; (3) An appeal to a judge in order to settle litigation concerning enforcement and to give orders to state authorities and other relevant bodies to enforce decisions; at the final state, it should be up to the judge to use all possible ways to ensure enforcement; (4) To identify and take due account of the rights and interests of third parties and members of the family including those of children.[653]

[650] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 9.

[651] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-98598%22]}

[652] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-79446%22]}

[653] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 18.

Another role of the judge in the enforcement of judicial decisions is that the judge may have power to suspend or postpone enforcement to take account of the circumstances of the litigants, for example give effect to Art. 8 of the ECHR.[654]

Under the Uniform Act, the court shall have competence in solving any impediment in executing a writ of execution according to the request from the bailiff or process-server.[655] In order to avoid delays in enforcement, especially with the emergency procedure, the competent authority to rule on all disputes or petitions relating to a forced act of performance or sequestration shall be the president of the court ruling in urgent proceedings, or the judge delegated by him. His decision may be appealed against within a period of fifteen days from its pronouncement. The time limit for appeal and the exercise of the right to appeal shall not bar enforcement unless otherwise specially decided, with reasons therefor, by the president of the competent court.[656]

b) Vietnamese law on the role of judge in the enforcement of judicial decisions

In Vietnam, the people's court system comprises the Supreme People's Court; Superior People's Court; Courts of the Provinces and Centrally run cities; Courts of Rural Districts and Military Courts.[657]

The courts who rendered judgments have responsibility for assuring that pronounced judgments or rulings are accurate, explicit, specific and suitable to reality; explaining in writing unclear contents of pronounced judgments or rulings after receiving requests of the involved parties or CJE agencies. For complicated cases, the time limit for reply is 30 days from the date of receipt of requests.[658] In fact, it is not clear about the relationship between the civil litigation of the court and the enforcement procedures of the enforcement agencies in the course of enforcement, which causes enormous difficulties and major obstacles for the enforcement activities. There are separation and interruption between these procedures. The lack of coordination between the judicial agencies and CJE agencies is one of the main reasons leading to the judgment enforcement being delayed, or unnecessary prolonged. There is no specific provision relating to the responsibility of the court if they do not respond promptly the request of the enforcement agencies and the parties involved if the judgment or decision is unclear. Quite a lot of judgments and decisions of the court are unclear, leading to the execution of the judgment was suspended or delayed. For example, according to the report of the Supreme People's Court of Vietnam, from 01 May 2008 to 31 March 2010, there

[654] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 24.

[655] The Uniform Act, Art. 48.

[656] The Uniform Act, Art. 48.

[657] The 2014 Law on Organization of People's Courts took effect on 01 June 2015, Art. 3.

[658] The LECJ, Art. 179.

were also 1341 cases, in which the court judgments or the court decisions were unclear, or repaired, or supplemented, and 106 of court judgments were unclear must be appealing to review under the procedural cassation.[659] This alarming situation was inconsistent with the standards and requirements of international laws, whereby, court decision to be enforced must be precise and clear in determining the obligations and rights engaged in order to avoid any obstacle to effective enforcement.[660]

The judgment execution agencies must make a written request to the court to explain and wait for a long time before implementing the judgment. There are judgments which already taken legal effect, but impossible to enforce, e.g., the court declares the sale of goods prohibited for sale; the judgment was detrimental to the JCs, while the JDs were the persons breaching the civil contracts; the judgment was contrary to the lawful civil agreement between the parties; and etc.[661]

In relation to the parties involved, the judge takes a decisive role in protecting the rights of the JCs, the JDs and the persons with related interests and obligations. Art. 7 Para. 1 Sub-para. d, Art. 7a Para. 1 Sub-para. d, and Art. 7b Para. 1 Sub-para. b of the LECJ regulate that all the JCs, the JDs and the persons with related interests and obligations have the rights to request the court to determine and divide the asset ownership or use right; to request the court to explain unclear points, correct spelling mistakes or inaccurate or insufficient data; to initiate civil lawsuits to protect his/her lawful rights and interests if there is a dispute over assets related to judgment enforcement. In practice, there are many problems relating to the coordination between involved parties with the enforcement agencies in interpretation, modification or supplementation of court judgments and decisions, e.g., a delay, but there were no strict punishments and unspecific sanctions for this delay.[662]

2. Timeframe for enforcement

a) International standards on the timeframe for the enforcement of civil judgments

One of the most important requirements of enforcement proceedings is to meet the speed of enforcement.[663] For the purpose of protecting the fundamental rights of the parties involved, the GCE stipulates that the Judge may amend the enforcement and grant a stay of enforcement.[664] Relating to the right to amend the enforcement, the

[659] *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 163-164; Report No. 4291/BC-UBTP12.

[660] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 9.

[661] Report No. 63/BC-BTP, p. 13-14.

[662] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Causes Affecting Effective Implementation of the Civil Decisions Involved in Criminal Judgments and Decisions, 2017.

[663] See A. Chapter 1. V. 1.

[664] The GCE, Art. 23.

competent judge of the State must be able to change the enforcement measures.[665] In general, high speed of enforcement without delaying is essential in the course of enforcement, but it does not always true in some specific circumstances in order to protect the fundamental right of the parties involved. Recommendation Rec (2003)17 of 9 September 2003 states that there should be no postponement of the enforcement process unless there are reasons prescribed by law. A postponement may be subject to review by the court.[666] In addition, in order for enforcement procedure to be effective and efficient as possible, enforcement procedure must prescribe a right for parties to request the suspension of the enforcement in order to ensure the protection of their rights and interests.[667] It is clear from the fact in many countries that entities on both sides of the debt relationship are protected by a numerous regulations, especially, when the due date for a payment is passed, effective and ethical conflict resolution often amounts to a careful balancing act between the rights of the creditor, and the rights of the debtor. There is a significant effect of the rule of law or the enforcement law on the size of the capital market. As a result, an effective judicial system plays a crucial role in the development and optimal performance of the market.[668]

Referring to the purpose of the postponement of the judgment enforcement, the Uniform Act requires enforcement acts not only protect the fundamental rights of the JD, but also consider the needs of the JC, in which any enforcement measures, e.g., alimony, exchange debts, postponement or reschedule payment of the sums owed over a period of one year should be applied by the competent court. In addition, the principal debt should be paid priority and then it may order that these measures are subject to the fulfillment by the debtor of acts necessary to facilitate or guarantee payment of the debtor.[669]

b) Enforcement law of Vietnam on the timeframe for the enforcement of civil judgments

Under the CPC 2015, within a year from the day on which the Court's judgments/decisions take legal effect, if any, legal violations in the judgments/decisions is discovered, the involved parties are entitled to submit written applications to lodge an appeal for consideration according to cassation

[665] *The Scientific Council of the UIHJ*, GCE, 2016, p. 183.

[666] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.1.f.

[667] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.2.f.

[668] *Perez-Ragone, Álvaro*: International Association of Procedural Law Seoul Conference, 2014, p. 612; *La Porta/Lopez-de-Silanes/Shleifer/Vishny*: Legal Determinants of External Finance, Vol. LII, No. 3, 1997, p. 1131-1132.

[669] Art. 39.

procedures.[670] The legally effective judgments/decisions shall be appealed against according to reopening procedures when there is one of the following grounds, e.g., important details of the case were newly discovered which the involved parties could not have known in the course of resolving the case; there are grounds to prove that the conclusions of the expert witnesses and translations of interpreters were untruthful or evidences were falsified; etc..[671] Thus, the judgment has been enforced after how long shall not be reviewed under reopening procedures? This is an important content, however, it was not specified in the CPC 2015, as well as in the enforcement law of Vietnam. In contrast, in Germany, according to § 586 (2) ZPO, after a 5-year time limit expires, the review of the enforced decision is inadmissible or null and void except the annulment of the decision when a party was presented by unauthorized representative (§ 579 (1) No. 4 ZPO).[672]

Persons who are competent to appeal against legally effective judgments or decisions of courts may request the postponement of enforcement of judgments or decisions in order to consider the appeals, according to the cassation procedures.[673] The postponement of enforcement of judgments shall comply with law regulations on civil judgment execution. Persons who have appealed, according to the cassation procedures legally effective judgments or decisions shall have the right to decide on the suspension of enforcement of such judgments or decisions until the cassation decisions are made.[674] On the contrary, enforcement agencies also have the right to request the court to reconsider the judgments or decisions if there are grounds to believe that the judgments or decisions violate the law in the course of litigation. If these requests of the enforcement agencies fail to be performed by the court or fail to respond promptly, such delay will lead to the delay of the judgment enforcement or cause difficulties to the civil judgment execution.[675]

Under the LECJ, suspension of judgment enforcement shall be fulfilled based on the decisions on suspension of judgment enforcement of persons competent to protest judgments or rulings, according to the cassation or re-opening procedures.[676] For judgments or rulings which have been partially or completely enforced, heads of CJE agencies shall promptly notify such in writing to protesters. In addition, heads of CJE agencies shall issue judgment enforcement decisions suspension upon receiving court's notices of acceptance of applications for opening of bankruptcy procedures

[670] The CPC 2015, Art. 327 Para. 1.

[671] The CPC 2015, Art. 352.

[672] *Thomas/Putzo*: Zivilprozessordnung, 39. Aufl. 2018, Rn. 6, p. 932.

[673] The CPC 2015, Art. 331, 354.

[674] The CPC 2015, Art. 332.

[675] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 134.

[676] The LECJ, Art. 49 Para. 1, 2, 3.

for JDs. The time limit for issuing a judgment enforcement decision suspension is 5 working days after the receipt of a court notice. Heads of CJE agencies shall issue a decision to continue judgment enforcement within 5 working days after the receipt of any of the following decisions: (1) a competent person's decision to withdraw the protest; (2) court cassation or reopening ruling to uphold the protested judgment or ruling; (3) court ruling on the suspension of procedures for bankruptcy or resumption of business operation of an enterprise or cooperative falling into bankruptcy. In fact, many court judgments have been completed but have been canceled, according to the cassation or reopening procedures for re-trial and the verdict of the latter judgment is reversed completely with the previous judgment. Therefore, the enforcement of the judgments in these situations is very difficult due to the opposition of the involved parties because of the errors of the court. For example, a judgment enforcement case involving the inheritance property in Vietnam lasted for 10 years. The courts at all levels would be trialed and re-trialed with two first-instance judgments, three appellate judgments and two cassation decisions with contradictory judgments. At the same time, the People's Procuracy must issue 03 decisions to protest the judgments of the courts. As a result, the execution time is unnecessarily lengthened, affecting the rights and interests of the involved parties.[677]

Postponement of judgment enforcement is regulated in the Art. 48 of the LECJ, grounds for postponement are provided in the Art. 48 Para. 1 of the LECJ, e.g., the JDs falls seriously ill as certified by a medical establishment of the district or higher level, or has entirely or partially lost his/her civil act capacity under a court decision; JDs' addresses have not yet been identified, or JDs cannot fulfill by themselves, their obligations under the judgments or decisions for other plausible reasons; etc. The time limit for issuing a judgment enforcement decision postponement in these cases is 5 working days after emerging a ground.

Heads of CJE agencies shall issue decisions on judgment enforcement postponement upon receiving requests of persons with protesting competence, at least 24 hrs. before the time of coercive judgment enforcement set a coercion decision. In case judgment enforcement agencies receive such requests less than 24 hrs. before the time of coercive enforcement set in decision on coercive judgment enforcement, heads of CJE agencies may decide on judgment enforcement postponement when finding it necessary. For judgments which have been partially or completely enforced, CJE agencies shall promptly notify such in writing to judgment enforcement postponement requesters. Persons competent to protest court judgments or rulings according to the cassation or reopening procedures may request enforcement postponement only once for examination of their protests in order to

[677] *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 164.

avoid irremediable consequences. A judgment enforcement decision postponement in these cases shall be promptly issued upon receipt of a competent person's request.[678] The maximum duration of judgment enforcement postponement requested by persons competent to protest judgments or rulings is 3 months after the date of making written requests for judgment enforcement postponement.[679] Within 5 working days after the ground for judgment enforcement postponement no longer exists or the expiration of the duration of judgment enforcement postponement requested by competent persons or the receipt of notices of non-existence of grounds for protest from persons with the protesting competence, heads of CJE agencies shall issue decisions to continue judgment enforcement.[680]

3. Supervision and control of enforcement activities

Relating to the supervision of the activities of the judicial officer and the enforcement agent, the GCE provides that, except if they are agents of the State, judicial officers and enforcement agents perform their activities under the supervision of the public prosecutor, who may, where applicable, send them an order to lend their assistance. The public prosecutor records all complaints formulated upon the occasion of an enforcement measure.[681] The supervision and/or control of enforcement agents by the authorities play a vital role in guaranteeing the quality of enforcement services. Enforcement activities should be assessed continuously by an external body and the control procedures and monitoring the activities of enforcement should be determined clearly during inspections for the purpose of smooth and prompt enforcement.[682] In the former socialist legal systems in which a great deal of enforcing activity be entrusted to the public prosecutors in lieu of the creditor because of ideological consistency.[683]

In Germany, enforcement proceedings are exclusively exercised by the State organs. If the state alone has the enforcement power, it is also obliged to provide a public-law procedure for the satisfaction of its legitimate claims.[684] Bailiffs and court officers are civil servants, subject to the rule of law. Bailiffs act out the enforcement court and under the strict control of the enforcement court. Meanwhile, judges are independent and only subject to the law (Art. 92 GG). The status and functions of the public prosecution office are laid down by the German laws, for example by the

[678] The LECJ, Art. 48 Para. 3.

[679] The LECJ, Art. 48 Para. 2.

[680] The LECJ, Art. 48 Para. 4.

[681] Art. 25.

[682] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 78, 79.

[683] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 29, 32.

[684] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 1, p. 1717.

GVG (§§ 141 to 151) or by the Code of Criminal Procedure. According to the GVG, a public prosecution office should exist at each court.[685]

From the above analyzed, clearly that enforcement agencies or court officers or bailiffs are not subject to the supervising of the public prosecution office. As a matter of principle, court officers are not subject to the supervision of the enforcement judge as well as of the public prosecutors, their decisions are only subject to the law, meanwhile bailiffs are under close supervision of the enforcement court. If the bailiffs neglect his duties by negligence, the Federal State who employed the bailiff has responsibility for damages occurring to debtors or creditors according to the laws of the State responsibility and the German Basic Law. The bailiffs' responsibilities are not also subject to the supervision of the public prosecutors, they are only responsible before the law for the enforcement of judgments. For example, § 839 BGB provides that if an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way. If an official breach his official duties in a judgment in a legal matter, then he is only responsible for any damage arising from this if the breach of duty consists in a criminal offence. This provision is not applicable to the refusal or delay that is in breach of duty in exercising a public function. Liability for damage does not arise if the injured person has intentionally failed or negligently failed to avert the damage by having recourse to appeal. In addition, Art. 34 GG mentions to the liability for violation of official duty regulating that if any person, in the exercise of a public office entrusted to him, violates his official duty to a third party, liability shall rest principally with the state or public body that employs him. In the event of intentional wrongdoing, or gross negligence, the right of recourse against the individual officer shall be preserved. The ordinary courts shall not be closed to claims for compensation or indemnity.

In general, in Germany, most executions are carried out under the supervision of the local courts (*Vollstreckungsgerichte*) and the ongoing supervision of the execution process as well as the determination of issues arising in connection with that process are also the responsibility of these courts.[686]

Vietnam is unexceptional where prosecutors are given more rights to supervise the activities of civil judgment enforcement agencies. There are some merits and demerits of the role of procuracies in the enforcement proceedings. According to the LECJ, procuracies shall not only inspect the observance of law in setting complaints

[685] Art. 141.

[686] *Murray/Stürner*: German Civil Justice, 2004, p. 445.

or denunciations about judgment enforcement under the law, but also may protest against decisions or acts of heads of CJE agencies at the same level or lower levels and the enforcers under the Law on Organization of People's Procuracies.[687]

In Vietnam, the People's Procuracy system consists of the Supreme People's Procuracy, Superior People's Procuracies, Provincial People's Procuracies, District-level People's Procuracies.[688] Under the 2014 Law on Organization of People's Procuracies of Vietnam, the People's Procuracies have a great deal of powers in the judgment enforcement, for example, they have responsibility to control the law observance in the judgment execution by judgment-executing bodies of the same and subordinate levels, the executors, organizations, the concerned agencies and individuals.[689] When controlling the judgment execution, they have rights to request the judgment-executing agencies of the same and subordinate levels, the executors, the agencies, organization and individuals involved in the judgment execution to issue judgment-executing decisions in strict with law, to enforce judgment-executing decisions and rulings in strict with law, to inspect by themselves the execution of judgments and decisions and notify the inspection results to the People's Procuracies.[690] It is worth mentioning that why the People's Procuracies are granted these powers in the judgment enforcement while the rights and responsibilities of the civil judgment agencies are provided explicitly by the laws? In Vietnam, the responsibilities of the enforcers are not only under the close supervision by the procurators but also subject to the law. Depending on the degree of fault and the damage occurs, executors shall bear civil liability, disciplinary or even criminal liability if they violate the law in the course of enforcement proceedings. In addition, both the LECJ and Law on Organization of People's Procuracies focusing on the rights and powers of the People's Procuracies in controlling the judgment execution as well as the legal relations between the People's Procuracies and civil judgment agencies. These laws have its limitations. For instance, lack of necessary regulations on providing the responsibility of the procurators if they cause damage to the involved parties and in protecting the rights and benefits of creditors or debtors as well as the relationships between the procurators and creditors or debtors in the judgment execution. In fact, there is not enough clear regulation on the responsibilities of the enforcement procurator when supervising the enforcement activities. Specifically, Vietnamese law regulates that the procuracy has the right to control the execution of judgments, but if the procurator makes mistakes or causes damage to the parties in the course of enforcement, there is unclear legal liability for

[687] The LECJ, Art. 160.

[688] The 2014 Law on Organization of People's Procuracies, take effect on 01 February 2015, Art. 40.

[689] The 2014 Law on Organization of People's Procuracies, Art. 28 Para. 2.

[690] The 2014 Law on Organization of People's Procuracies Art. 28 Para. 6 Sub-para. a, b, c.

the damage of the procurator.[691] In addition, for the purpose of supervising effective civil judgment execution, the competent persons who are responsible for supervising the enforcement activities requires a deep understanding of enforcement laws; capable, good supervising method. However, in fact, there are competent entities who do not have a deep understanding of CJE when supervising civil judgment activities, so they are often embarrassed when performing their powers, as a result.[692]

[691] Report No. 63/BC-BTP, p. 16.

[692] *Hoang, The Anh*: Supervision of Civil Judgment Enforcement, PhD. Dissertation, 2015, p. 130.

III. Conclusions for Chapter 2

Until the present, one of the greatest problems of the CJE in Vietnam is that there is not enough theoretical basis to affirm the nature of the civil judgment execution, which is the judicial, administrative or a mixed administrative-judicial system.[693] For examples, Report No. 112-BC/BCS proposed that the nature of the enforcement proceedings should be the judicial activity, which is the final stage of the civil proceedings, in many countries assigned to the court.[694] However, this Report did not explain why the enforcement proceeding was judicial procedure, moreover, this was only a summary report, there was no legal validity to implement such laws or legislations.

Dr. Nguyen, Thanh Thuy holds the opinion that the nature of the enforcement is a mixed form of administrative - judicial activity, which is both the nature of administrative activities and nature of judicial activity. The relevant reasons may include the sufficient ground for judgment execution is court judgments and decisions; agencies involved in the judgment execution process are mainly judicial agencies; judgment execution is a next stage after the trial period, has an intimate relationship with the earlier stage of the proceedings; between judgment execution and the adjudicating stage has a causal relationship with each other; the nature of judgment execution is the form of active observance, but it is to abide by the judgment of the judicial authority with different ways and measures to force the obligors to be determined in the court judgment or decision must fulfill their obligations; etc.[695] The judgment execution process aims to the *restitutio in integrum* the initial status of the rights and obligations of the subjects, so the enforcement procedures are also strictly regulated by the law because it is related to human rights and civil rights.[696] Another point of view, Dr. Nguyen, Quang Thai argues that civil judgment execution cannot be an administrative activity nor a mixed administrative-judicial activity.[697] He affirmed that the nature of the enforcement is the judicial activity for a number of main reasons: (1) The judgment enforcement agency is the legal protection body; (2) Judgment enforcement activities are carried out through people assigned by the State to execute judgments and decisions of the courts (executors), each judgment enforcement agency has its own jurisdiction and is relatively independent, superior judgment enforcement agencies cannot use administrative orders to request lower-level judgment enforcement agencies to

[693] Report No. 63/BC-BTP, p. 13.

[694] Report No. 112-BC/BCS, p. 25.

[695] *Nguyen, Thanh Thuy*: Improving the Law on Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2008, p. 14-17.

[696] *Forst, Déborah*: The Execution of Judgments of the European Court of Human Rights, p. 5.

[697] *Nguyen, Quang Thai*: Socialist Legality in the Activities of Civil Judgment Execution in Vietnam Today, PhD. Dissertation, 2008, p. 17-18.

perform; (3) The function of the judgment enforcement agency is to realize the effective court judgments and decisions that are enforced in practice; (4) Judgment execution is a judicial activity because it is considered a basis for lawmakers to introduce the concept of infringement of judicial activities prescribed in Art. 292 of the 1999 Vietnam's Criminal Code, whereby Art. 292 provided the definition of crimes of infringing upon judicial activities as follow:

"Crimes of infringing upon judicial activities are the acts of infringing upon the legitimate activities of investigating, procuracy, adjudicating and judgment-executing agencies in the protection of the interests of the State, the legitimate rights and interests of organizations and/or citizens".

All above views are generally analyzed, confirming the nature of civil judgment execution based on the current provisions of Vietnamese law. However, the existing law at that time in Vietnam, before the years of 2008 even after 2008, still have had many limitations and shortcomings, which were incomplete, contradictory and overlapping.[698] It is difficult to confirm the correctness of a viewpoint when it was analyzed based on the rules of an incomplete legal system.[699] In fact, the CJE of Vietnam was not completely effective and efficient, and many court judgments and decisions have been issued for many years but have not yet been enforced. For example, the number of judgment enforcement cases must transfer to the next period was still very high, in 2013, there were more than 239,000 backlogs which have not yet been executed.[700] Therefore, the analysis of the nature of judgment execution based on the existing law or practice law at that time is the lack of scientific basis and inaccurate because not only at that time but also until now the Vietnamese legal system is still evolving and incomplete.

Vietnam has been studying to build and renew the organizational system of civil judgment execution. At present, Vietnam has a system of civil judgment execution of the state (executor are civil servants receiving salary from the state budget) and the system of private bailiff offices of private bailiffs. The provisions of the law on the legal status, duties and powers between the executors, private bailiffs and judges in civil judgment execution may also inappropriate. The role, duties and powers of judges in the judgment execution process have not been stipulated fully and clearly in the law. Training and fostering of executors still have many shortcomings, e.g., training time, content and methodology of training. Salaries of executors particularly,

[698] *The Japan International Cooperation Agency and The General Department of Civil Judgment Enforcement of Vietnam*: International Workshop, Practical Implementation of the 2014 Civil Judgment Execution Law and Guiding Documents: Improvement Orientation, 2019, p. 22.

[699] Report No. 35-BC/CCTP, Part 2. I. 7, p. 23; Conclusion No. 01-KL/TW, Section 1.

[700] *The Japan International Cooperation Agency and The General Department of Civil Judgment Enforcement of Vietnam*: International Workshop, Practical Implementation of the 2014 Civil Judgment Execution Law and Guiding Documents: Improvement Orientation, 2019, p. 23-25.

of Vietnamese civil servants in general have not been paid based on the training level, but mainly based on the work experience (number of working years) so cannot encourage and attract highly qualified people. There are no regulations requiring executors to buy professional liability insurance or deposit a guarantee of liability if causing damage is another limitation of the law. After being educated through vocational training courses, many executors and private bailiffs are still unfamiliar and difficult to enforce the judgments and decisions in practice. The main reasons may include: the enforcement law has been changed frequently, the enforcement law conflicts, overlaps with other fields of law; executors are mainly educated about judgment enforcement laws and enforcement procedures without intensive training in other specialized fields, e.g., credit, banking, real estate, intellectual property, business, commerce, bankruptcy, international judiciary, etc. The procedures of judgment execution are being examined, inspected, supervised by too many competent agencies, organizations and individuals, e.g., procurators of the People's Procuracy and the inspectors of the specialized inspection agencies, judicial officers of people's councils, other judicial agencies, etc. Meanwhile, these persons are not being fully trained in CJE profession.[701] If the inspection and supervision process have errors, causing damage to the parties, the persons competent to supervise the judgment execution process may not be responsible because the lack of specific sanctions. This is also one of the major limitations of the current enforcement law in Vietnam. The enforcement law of Vietnam has not yet strictly regulated even not yet regulated adequate civil, administrative and criminal sanctions applied to these faults.[702] Although the Art. 364 of the Civil Code 2015 regulates that

"Fault in civil liability includes intentional fault and unintentional fault. Intentional fault means that a person is fully aware that its act will cause damage to another person, but, nevertheless, performs the act and, irrespective of whether it so wishes, allows the damage to occur. Unintentional means that a person does not foresee that its action is capable of causing damage, even though it knows or should know that the damage will occur, or where it does foresee that such act is capable of causing damage but believes that the damage will not occur or will be able to be prevented".

However, this article seems to apply only to civil, business and commercial transactions between the normal civil and commercial entities rather than being invoked to apply in civil service activities of civil servants and authorized people.

Similarly, in Germany, the only confused thing that can be countered is that the legal nature of the enforcement law has not been clarified - it is called a judicial

[701] See B. Chapter 1. II. 3.

[702] *Nguyen, Van Nghia*: Responsibility for Providing Information about the Assets of the Judgment Debtor in the Enforcement of Civil Judgments in Europe and in Germany, Legis. No. 01/2018, p. 59-64.

procedure *sui generis*.[703] However, contrast to Vietnam, in Germany, the relation between the process of adjudication conducted by the court and enforcement procedures carried out by enforcement agency are thoroughly regulated by laws. Civil judgment enforcement procedures also belong to civil proceedings as set out in ZPO on resolving civil disputes. Procedures for CJE is part of the legal system of civil proceedings, nor have a procedure of voluntary jurisdiction in civil proceedings as well as in administration. However, there are fundamental differences between adjudicative and enforcement proceedings that have their roots in the different determination of purpose: finding and substitution of the right on the one hand, and assertion of the titled claim on the other. For example, the enforcement has its own organs and is subject to its own procedural principles. The parties involved in the enforcement are not called plaintiff *(Kläger)* and defendant *(Beklagter).*[704] However, they have its own special names that are called the JC *(Gläubiger)* and the JD *(Schuldner).*[705] Moreover, the nature of enforcement may derive from the concept of enforcement, which is the procedure for the realization of judicially established or officially documented creditor rights in the course of state compulsion.[706] Enforcement procedure is performed and is responsible for mandatory implementation by the state. Enforcement process is the state procedure aiming to the compulsory enforcement or security of private claims with the help of state power. The purpose of the enforcement is to satisfy the titled claim of the JC. It should be balanced between the satisfying the requirements of the creditor by means of effective enforcement mechanisms and the protection rights of the JD.[707] Other research results also confirmed that the execution, as prescribed by the ZPO, is a public procedure for enforcing or securing private-law claims with the state power. Instead of the creditor who is prohibited from private self-help despite a judicial determination of his claim, the state which is the exclusive one using coercive power, thus ensuring complete legal protection and the enforcement of the right of the creditor.[708] The purpose of the enforcement is to satisfy the titled claims of the creditor.[709] The Code separates rigorously strictly between the trial procedures and the enforcement once. Nevertheless, the enforcement is a part of the civil process,

[703] *Stamm, Jürgen*: Die Strukturprinzipien der Zwangsvollstreckung, Zwangsvollstreckung und Zwangsversteigerung aktuell Tagung des Bundesministeriums der Justiz und für Verbraucherschutz bei der Deutschen Richterakademie in Wustrau im November 2017, p. 19.

[704] *Prütting/Gehrlein*: Zivilprozessordnung, 10. Aufl. 2018, Rn. 7, p. 1719.

[705] *Lüke, Gerhard/Hau, Wolfgang*: Zwangsvollstreckungsrecht, 3. Aufl. 2008, p. 3.

[706] *Gaul/Schilken/Becker-Eberhard*: Zwangsvollstreckungsrecht, 12. Aufl. 2010, § 1, Rn. 1, p. 1.

[707] *Kornol/Wahlmann*: Zwangsvollstreckungsrecht, 2. Aufl. 2017, Rn. 1, p. 33.

[708] *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 2, p. 7; *Prütting/Gehrlein*: Zivilprozessordnung Kommmentar, 10. Aufl. 2018, Rn. 1, p. 1717.

[709] *Musielak/Voit*: Zivilprozessordnung, Kommentar, 15. Aufl. 2018, Rn. 1, 6; *Saenger, Ingo*: Zivilprozessordnung, Handkommentar, 7. Aufl. 2017, Rn. 1, p. 1588.

although there are significant differences.[710] Enforcement procedures are not subject to the previous trial procedure and are not also the result of the previous proceedings, because the JC may not need to ask for enforcement and the JD may also voluntarily perform the obligation or the document is executed that is not the judgment of the court.[711] Discuss the relationship between the adjudicating proceeds and the enforcement stage, Prof. Andrieux Francoise holds the opinion that

"The principle of legal security shows in the separation of powers between the judges who say the law and the judicial officer who must ensure the implementation of the decisions. The concepts of Rule of Law and Legal Security are linked, but the judicial officer is the pivot".[712]

In Germany, there is a distinction between the adjudicating court and the court dealing with enforcement or enforcement court Execution is separated from adjudication and the principle of the "organizational isolation of enforcement proceedings" which was established at the end of the 19th century. The court of enforcement is the county court of the place of execution *(Amtsgericht)*, usually acts through a court officer/a registrar *(Rechtspfleger)*, and the judge only reserves in a limited number of cases.[713]

[710] *Musielak/Voit*: Zivilprozessordnung, 15. Aufl. 2018, Rn. 3, p. 1950.

[711] *Thomas/Putzo*: Zivilprozessordnung, 39. Aufl. 2018, Rn. 1, p. 986.

[712] *Andrieux, Francoise*: The Execution of Court Decisions in the Francophone World, 27/2012, p. 147.

[713] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 9-11.

C. Chapter 3:

Ensuring the Quality of Enforcement Measures under the International Standards: Current Situations in Vietnam

Another weakness of the Vietnam's CJE law is the lack of a mechanism to protect the minimum legal rights and interests of JDs and their relatives, e.g., spouses, children, parents in the course of enforcement. In particular case happened on 21 July 2009 in a province of Vietnam, the JD strongly disagreed with the court's trial result and resisted the execution of the judgment by burning their houses which were assets involved in judgment enforcement, and consequently the JD has died of fire in their house during the time of coercive judgment enforcement.[714] In reality, there were cases of opposition to the execution of judgments that resulted in the death of the JD. However, the enforcement law of Vietnam has not yet appropriately adjusted the acts of resisting the execution of judgment, leading to committing suicide or death of the JD. Vietnamese law also does not have a clear legal mechanism to ensure the power, autonomy and flexibility of executors in the execution. Furthermore, Vietnamese regulations on the immunity from the enforcement measures are also obsolete and the provision of international law in this area are new to the Vietnamese legal system. Therefore, the international standards on the above-mentioned areas, which will be analyzed below will serve as a basis for finding solutions to improve the law on enforcement of civil judgments of Vietnam in the coming time.

I. Protection of fundamental rights of the judgment debtor as well as his/her family and immunity from the enforcement

1. The international regulations on the protection of basic rights of the judgment debtor, children and other members of the judgment debtors' families and immunity from the enforcement

a) The principle of proportionality of the enforcement measures

One of the innovations of the GCE is a proper balance between the right of the JC and the protection of the fundamental rights of the JD. It is important to note that, the function of enforcement law consists not only of guaranteeing that JCs will be duly paid, but also of protecting the fundamental rights of JDs. In respect of the principle

[714] *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 142-145.

of proportionality *(Verhältnismäßigkeitsprinzip)* of the enforcement measure, the GCE provides that

"The enforcement measure must be proportional to the amount of the claim. In the event of abuse, the creditor may be directed to make reparations".[715]

Sharing the same concept with this regulation, Recommendation Rec (2003)17 of 9 September 2003 states that the interests of the claimants (creditors) and defendants (debtors) should be trucked a proper balance during the enforcement process, in a particular case, taking into account the provisions of both Art. 6 and 8 of the ECHR, including the right to a fair trial and the right to respect for private and family life. To the extent appropriate, the interests of third parties should also be kept in mind in the course of enforcement.[716] The European countries have realized that enforcement plays important role of the legal process. *"It is not over when it is over, it is over when it has been put into life"* - could be one of the slogans of the new approach, which means that the legal process does not end with a final and just decision, but when such decision is in fact implemented.[717]

In one study, after a long period of surveying, comparing and analyzing the effectiveness of the enforcement system of CIS and SEE countries and the region, the researchers have concluded that:

"Even the best judgment rendered by the most qualified judge in a commercial dispute becomes futile if it cannot be effectively enforced".[718]

b) Assets that cannot be seized in the course of enforcement

In order to protect the fundamental rights of the JDs, and for the purpose of both enabling the JD and his or her family to maintain a subsistence standard of living and permitting them to function as healthy, productive and contributing members of society, a minimum threshold of income must be exempt from seizure incurred in order to help the JD maintaining a minimum standard of living.[719] The GCE also regulates that all goods can be seized subject to the exclusion of those goods considered immune from seizure by the national law. In the event of a seizure of bank assets, a sum must be left at the disposal of the debtor sufficient to ensure his

[715] Art. 27.

[716] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle II.1.g.

[717] *Uzelac, Alan*: Improving Efficiency of Enforcement Proceedings: Recommendation on Enforcement of the CoE and its Relevance for Transition Countries, p. 3.

[718] *O'Sullivan, Kim/Bradautanu, Veronica*: Enforcement of Judgments in SEE, CIS, Georgia and Mongolia, 2016 (18) 2, p. 209.

[719] *M Buckwold, Tamara/CC Cuming, Ronald*: Modernization of Saskatchewan Money Judgment Enforcement Law, 2005.

and his family's subsistence, the amount whereof is determined by law.[720] The certain amounts in the bank account of the JD are exempt from the preservation order and from the seizure, which is provided by the law of the Member State of enforcement.[721] Under the CoE, certain essential assets and income of the defendant should be protected, e.g., household goods, basic social allowances, monies for essential medical needs and necessary working tools.[722] The principle of legal state (*Rechtsstaatsprinzip*) should ensure a balance between the benefits of the JC and the JD fairly and practically.[723] In Africa area, each of the Contracting States defines the inalienable property and rights.[724] Article 53 of the Uniform Act explains the inalienable property and the rights of the JD in more detail, which is

"where an account, even a joint account, supplied by the earnings and salary of one spouse under community of property, is subject to a forced act of performance or sequestration for the payment or guarantee of a debt incurred by the other spouse, there shall immediately be placed at the disposal of the spouse under community of property a sum of his choice equivalent to the earnings and salary paid into the account during the month preceding the seizure or to the average monthly amount of earnings and salary paid in during the twelve months preceding the seizure".

c) The immunity from the enforcement measures

Immunity from enforcement measures and jurisdictional immunity are two distinctive concepts. While immunity from jurisdiction refers to a limitation of the adjudicatory power of national courts, immunity from the enforcement measures restricts the enforcement powers of enforcement agents or other organs.[725] With regard to the immunity from the enforcement measures, cases of immunity must be clearly specified in the national law, particularly in respect of the state and public entities, as well as in respect of diplomatic personnel.[726] The immunity of the state and public entities are provided in some international Conventions, e.g., Convention on Jurisdictional Immunities; Vienna Convention on Diplomatic Relations 1961 (Art. 30 and Art. 31); Vienna Convention on Consular Relations 1963 (Art. 31); European Convention on State Immunity 1972. For example, Art. 19 Para. c of the Convention on Jurisdictional Immunities requires no post-judgment measures of constraint, e.g., attachment, arrest or execution, against the property of a State may be taken in

[720] Art. 25.

[721] Regulation (EU) No. 655/2014, Art. 31.

[722] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.1.h.

[723] *Linke/Hau*: Internationales Zivilverfahrensrecht, 7. Aufl. 2018, Rn. 15.29, p. 301, fn. 43.

[724] The Uniform Act, Art. 51.

[725] *Reinisch, August*: European Court Practice Concerning State Immunity from Enforcement Measures, Vol. 17 No. 4, 2006, p. 803.

[726] The GCE, Art. 26.

connection with a proceeding before a court of another State unless and except to the extent that it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed. The specific categories of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes, comprising:

(1) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;

(2) property of a military character or used or intended for use in the performance of military functions;

(3) property of the central bank or other monetary authority of the State;

(4) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(5) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.[727]

Based on the provisions of the International Conventions on Immunities for the State in the ECJs, Art. 30 of the Uniform Act also requires compulsory distraint and preventive measures shall not apply to persons enjoying immunity from execution.

d) The protection of the debtor and his/her family, especially the rights of children in the course of enforcement according to the requirements of the international laws

According to the GCE, States shall ensure that enforcement on the person of the debtor or his family must comply with international Conventions, charters, and declarations. For example, the imprisonment as an enforcing measure for civil debt must be prohibited; enforcement on other members of debtor's family must be prohibited; and the primacy of the interests of the child must be respected.[728] When the enforcement process concerns family law matters, the interests of the members of the family should be taken into account. In addition, the rights of children and their best interests should be a primary consideration and must be, in accordance with

[727] The Convention on Jurisdictional Immunities, 02 December 2004, Annexe, UN-Doc. A/RES/59/38, Art. 21 Para. 1.

[728] The GCE, Art. 32.

international and national law.[729] Enforcement procedures must be consistent with the international conventions, e.g., Art. 35 of UN Convention on the Rights of the Child of 20 November 1989 requires States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.[730]

e) International standards on the legal remedies in enforcement proceedings

The motion of "remedies" indicates the field of law dealing with the means of enforcing rights and redressing wrongs, meanwhile the "remedy" represents the means of enforcing a right or preventing or redressing a wrong, legal or equitable relief. A remedy is anything a court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are judgments that plaintiffs are entitled to collect sums of money from defendants and orders require defendants to refrain from their wrongful conduct or to undo its consequences. The court decides whether the litigant has been wronged under the substantive laws. The law of remedies falls somewhere between substance and procedure, distinct from both but overlapping with both.[731]

The concept of legal remedy in enforcement proceedings varies from country to country. For example, in Serbia, legal remedies in enforcement proceedings are the appeal and objection.[732] Meanwhile, complaints and appeals are common legal remedies preventing the breaches of the enforcement procedure in CIS, Georgia and Mongolia countries, e.g., Russia, Belarus, Mongolia or Kazakhstan.[733] On the basis of the above, it could be concluded that in the course of enforcement proceedings, someone can seek to recover something by the lawsuit, e.g., money, the performance of an obligation, a determination of rights or other purposes which are called legal remedies in enforcement proceedings.

Under the General Assembly resolution 60/147 of 16 December 2005,[734] if the involved parties are victims, the State should take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference and ensure their safety from intimidation and retaliation, as well as that of their family, before, during and after judicial, administrative, or other proceedings

[729] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.1.g.

[730] https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[731] *Garner, Bryan A*: Black's Law Dictionary, 8th ed., Thomson West, 2004, p. 1320.

[732] https://djordjevic-lawyer.co.rs/en/objection-legal-remedies/

[733] *Colman, Alan/Bradautanu, Veronica*: Enforcing court decisions in the CIS, Georgia and Mongolia, 2014, p. 48-49.

[734] *The General Assembly*: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 11 (a), (b); 12 (b); and 17.

that affect the interests of victims. They have right to remedies, e.g., equal and effective access to justice or adequate, effective and prompt reparation for harm suffered. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic law effective mechanisms for the enforcement of reparation judgements.

Concerning the persons competent to appeal, according to the Opinion No. 13 (2010), judges should be competent to appeal or complaint if there is any abuse in the enforcement procedure.[735] In addition, judges may have power to suspend or postpone enforcement to take account of the particular circumstances of the litigants.[736]

2. Vietnamese laws on the protection of basic rights of the judgment debtor, children and other members of the judgment debtor's families, immunity from the enforcement and legal remedies

a) The principle of proportionality of the enforcement measures

Under the LECJ, the involved parties in the enforcement proceedings include the JC and the JD.[737] Both of them have the same and different rights stipulated in the enforcement law.[738]

The rights sharing by both the JC and the JD are, e.g., the right to reach an agreement together or those with related rights and obligations at the time, place, method and contents of judgment enforcement; to be notified of judgment enforcement; the right to request the court to determine and divide the asset ownership or use right; etc.[739]

The exclusive rights of the JCs are, e.g., the right to request judgment enforcement, suspension of enforcement of part or the whole of the judgment or decision concerned, application of measures to secure judgment enforcement and coercive measures to enforce judgments prescribed by the enforcement law; the right to directly verify and provide information on judgment execution conditions of the JD or authorize another person to do so; etc.[740]

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[735] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 18.

[736] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 24.

[737] The LECJ, Art. 3 Para. 1.

[738] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 59-82.

[739] The LECJ, Art. 7 Para. 1 Sub-para. b, c, d and Art. 7a Para. 1 Sub-para. a, c.

[740] The LECJ, Art. 7 Para. 1 Sub-para. a, dd.

In Germany, the creditor initiates and has control over the progress of the enforcement proceedings.[741] In all states (*Bundesländer*), the JC is a person having the right to commence and end the enforcement procedures.[742] This right is closely related to the substantive power of disposal and is part of the private autonomy, to some extent, including a waiver of execution. These rights are guaranteed by Art. 2 (1) GG.[743] Specifically, under this provision, the right to free development of personality is protected by the Constitution. If the judgment is not enforced, the right of the creditor shall not be restored, e.g., lent money is not paid back, borrowed assets are not returned, etc. These situations will affect adversely the right to free development of personality. For example, B had only 15,000 Euro in total. He had decided to use this money to take part in some German courses and a tour guide course. Because A and B were friends, he lent A all this money. When the debt was due, A did not return it to B. According to the court's judgment, A must pay for B 15,000 Euro. However, after 5 years the judgment was not enforced. B did not have money to study German and could not attend the tour guide course. Apparently, this court judgment was non-enforceable adversely affecting on the right to free development of personality and the right of career development of judgment creditor B as a result.

The principle of party disposition also allows the JC to terminate enforcement proceedings by withdrawing the decisive application. This principle is closely connected to the priority of the enforcing creditor.[744] According to German law, there is no central enforcement authority which decides on the enforcement measures.

In Vietnam, the LECJ regulates that the JC has rights to request judgment enforcement and to apply for security measures and coercive measures prescribed by the law.[745] In practice, however, security measures are often performed by the enforcers, since the enforcement law regulates that

"Enforcers may, at their own will or when requested in writing by the involved parties, promptly apply measures to secure judgment enforcement in order to prevent dispersal or destruction of assets or shirking of judgment enforcement."[746]

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[741] *Hess, Burkhard Hess*: Study No. JAI/A3/2002/02 on making more efficient the of judicial decisions within EU, p. 8-9.

[742] Paulus, Christoph G.: Zivilprozessrecht, Erkenntnisverfahren, Zwangsvollstreckung und Europäisches Zivilprozessrecht, 6. Aufl. 2017, Rn. 755, p. 274; *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 481.

[743] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 6.7, p. 59.

[744] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 39, fn. 456.

[745] The LECJ, Art. 7 Para. 1 Sub-para. a.

[746] The LECJ, Art. 66 Para. 1.

The JCs rarely use the right to request enforcer to apply the security measures to ensure the enforcement.[747] One of the reasons could be the following provisions:

"Parties who request enforcers apply security measures shall be held responsible before law for their requests. In case they make a wrongful request, causing damage to parties' subject to security measures or third parties, they shall pay compensations".[748]

Therefore, disposition is not considered as a principle in the enforcement proceedings in Vietnam.

JDs also have several exclusive rights under the LECJ, i.e., the right to voluntarily execute judgments; the right to voluntarily hand over his/her assets for judgment enforcement; the right to directly request or authorize another person to request judgment enforcement in accordance with the law; etc.[749]

Since 2014, for the first time, specific articles on the rights and obligations of the JCs and the JDs were added into the enforcement law of Vietnam. These articles aim to strengthen the initiative and raise the responsibility of the parties in the process of enforcing the judgments.[750] Nevertheless, the rights and benefits of the JC and the JD are not clearly distinguishable by the laws.

Firstly, in the course of enforcement procedures, many rights of the creditors are also the same rights of the debtors, e.g., the rights to reach agreement together or the rights to request the court to determine and divide the asset ownership or use right. This provision of the Vietnamese enforcement law seems inconsistent with the requirements of the international standards. Under the international requirement, there exists a principle, according to which the creditor who is the holder of an enforceable title may seize all the goods belonging to his debtor without waiting and without being required to start new proceedings for enforcement.[751] The legal status of the JCs and the JDs are also clear and intricately stipulated under the German law on enforcement. For example, the JD remains the owner of the right, but he is not allowed to do anything that affects the creditor's position. According to § 835 ZPO, the JC does not have the rights, e.g., the right to move in, to remit, to set off, or to declare, because according to the law, he is not entitled. However, he may do anything legally to obtain his lien and thus the garnished debt.[752]

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[747] *Nguyen, Van Nghia/Hoang, Thi Thanh Hoa*: Legal mechanisms to ensure the Enforcement of Civil Judgments and Rulings having taken Legal Effect, Jurisprudence Journal, 06 (217), 06-2018, p. 25-26.

[748] The LECJ, Art. 66 Para. 2.

[749] The LECJ, Art. 7a Para. 1.

[750] Description No. 120/TTr-CP.

[751] *The Scientific Council of the UIHJ*, The Preamble of the GCE, 2016, p. 122.

[752] *Thomas/Putzo*: Zivilprozessordnung, Kommentar, 39. Aufl. 2018, Rn. 33, 34, p. 1217.

Secondly, the Vietnamese enforcement law did not distinguish and specify specific enforceable rights of the creditor and the debtor,[753] e.g., the rights of the creditor, including a right of general security on all the goods, the ability to invoke measures appropriate to the nature of goods, the freedom to choose enforcement measures, etc. The rights of the debtor include the protection of privacy and the family, the protection of certain goods that cannot be seized, the right to compensation in the event of incorrect enforcement, etc.[754]

Finally, the JDs are given many rights that should be, conversely, their obligations in the enforcement of judgments, e.g., the right to voluntarily execute judgments; the right to voluntarily hand over his/her assets for judgment enforcement, etc. Thus, in some circumstances, the JDs may use their statutory rights predatory, in order to deliberately delay enforcing the judgments.[755]

From the above analysis of the ECJs and its practice in Vietnam, it is difficult to affirm that the enforcement law of Vietnam has completely ensured the principle of balancing the interests between the JCs and the JDs or not. "Proportionality" is the principle that the use of force should be in proportion to the threat or grievance provoking the use of force.[756] Proportionality is an important guiding principle, which is inherent to enforcement proceedings and relevant to "balancing" the competing rights and interests of the parties. This principle requires that the enforcement measures must not unnecessarily infringe the rights of the debtor and third parties. Moreover, disproportionate actions causing annoyance or embarrassment to the defendant/debtor are not allowed.[757] Similarly, even though the regulations on the enforcement law of Vietnam also make a brief mention relating to the principle of proportionality, this principle is not considered as an important principle and was not provided in the general part of the LECJ. It is also only sketchy provision concerning distraint of assets under common ownership. In particular, Art. 74 Para. 2 Sub-para. a of the LECJ regulates that

"For dividable common assets, the enforcer shall apply coercive measures regarding the asset proportion owned by the JD".

Unfortunately, most of the contents of this principle are written in a subordinate by law (a decree) issued by the executive body (the Vietnamese Government), which has a lower legal effect in compared to the act or the code of laws issued by the

[753] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 62-69.

[754] *The Scientific Council of the UIHJ*, The Preamble of the GCE, 2016, p. 126.

[755] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*, Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 70-72.

[756] *Garner, Bryan A.*: Black's Law Dictionary, 8th ed., 2004, p. 1255.

[757] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 44.

Vietnamese Parliament. Pursuant to the law on promulgation of legislative documents of Vietnam:

"If various legislative documents contain different regulations on the same issue, the superior document shall apply".[758]

Therefore, under the principle of application of legislative documents in Vietnam, if there is a conflict between the provisions of this decree with the other specialized laws on the same content, the other specialized laws shall prevail because of the higher legal effect. Thus, the proportionality principle mentioned in this decree may not work effectively in practice. For example, Art. 13 Para. 1 of the Decree No. 62/2015/ND-CP requires that the application of security measures and forcible measures must be suitable for the JD's obligations and necessary costs in cases where the JD only has one piece of property whose value is far higher than his/her liability and such property cannot be divided or, if divided, will significantly lose its forcible measures to satisfy the judgment. Or Art. 24 Para. 4 of this Decree provides that where the JD voluntarily gives up a specific piece of property which is enough to satisfy the judgment and cover relevant costs, the enforcement enforcers shall explain that the JD must pay relevant costs and seize the property to satisfy the judgment. The JD shall be restricted from making transactions of other property until the judgment is fully satisfied.

The principle of proportionality has also been subject of study in several researches in Vietnam. The content of this principle is that the executors have the right to apply one or more coercive measures to enforce civil judgments, but those measures must be in line with the obligation to execute the judgments they have to perform according to the judgments or decisions.[759] The result of this scientific research from 2007 continues to reiterate the principle of proportionality until 10 years later (2017). However, the principle is still not officially recognized and applied as an important principle in the ECJs in the highly effective legal documents, namely the LECJ or the civil procedure code.

In Germany, the principle of proportionality provided in § 803 ZPO is considered as an important leading principle in enforcement proceedings. Enforcement in Germany pertains to post-judgment and often deal with the idea of proportionality

[758] The Law on Promulgation of Legislative Documents which came into force from 01 July 2016, Art. 156 Para. 2

[759] *Nguyen, Cong Binh*: Law on Enforcement of Civil Judgments: Theoretical and Practical Issues, 2007, p. 199-200; *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 15.

between the creditor's benefits and the debtor's sacrifice.[760] According to this principle, § 803 (1) ZPO regulates that

"Compulsory enforcement against movable property is affected by attachment. It may not be extended beyond what is required to satisfy the creditor and to cover the costs of compulsory enforcement".

The requirements of this article to be considered by the respective executing agencies (bailiff, judicial officer, and court competent for ECJs).[761] The debtor bears the burden of proof for the expenses which justify the excessive distraint. The creditor proves not to be pleased by an excessive distraint, as § 803 (1) S. 2 is also a legal protection within the meaning of the § 823 (2) BGB.[762] Therefore, if the JC recognizes the excessive distraint by himself, he may be liable to the JD for damages.[763] The principle of effective attachment is a fundamental rule for the course of enforcement and also as a result of the principle of proportionality and therefore a constitutional principle.[764]

Therefore, in comparison to the international standards and German law on the principle of balancing, the question remains for Vietnamese lawmakers not only at the present but also in the coming time.

b) Protection of the fundamental rights of the debtors, their children and other members of the judgment debtors' families

The Vietnamese enforcement law protects the fundamental rights of the debtors, their children and their family members. Here are four precedent cases in relation thereof:

aa) The JD is not required to enforce the judgment if the conditions for judgment execution are not meet (he/she lacks of judgment execution conditions), whereby the JD has no income or has low incomes which can only ensure his/her minimum living standard and persons whom he/she shall nurture, and has no assets for judgment enforcement or has assets the value of which is sufficient only for paying expenses for judgment enforcement or has assets which are not allowed to be distrained and handled for judgment enforcement under the law, e.g., the poor household. According to the Decision No. 59/2015/QD-TTg, "poor household in rural areas" means household having a monthly per capita income of VND 700,000 or lower (≈<

[760] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law - Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 15.

[761] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 803, Rn. 2, p. 792.

[762] More detail sees: *Bamberger/Roth/Hau/Poseck*, BGB, Bürgerliches Gesetzbuch, Kommentar, Band 3, 4. Aufl. 2019, Rn. 123-124, p. 671.

[763] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, Kommentar, 6. Aufl. 2016, § 803, Rn. 3, p. 793.

[764] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, fn. 31, Rn. 7.17, p. 86.

€ 28/month); the poor household in urban areas is the one having a monthly per capita income of VND 900,000 or lower (≈< € 36/month).[765] In these cases, information on names, addresses and judgment execution obligations of JDs who lack judgment execution conditions shall be posted up on websites of the CJE agencies and sent to commune-level People's Committees of localities where it is verified for public notification. This is a website that anyone can access, so there may be security issues of personal data of the JDs that need to be set here compared to international standards.[766] For example, enforcement agents must bear a responsibility for maintaining confidentiality when secret, confidential or sensitive information comes to their attention in the course of enforcement proceedings.[767]

bb) The execution of court judgment or decision will be postponed if the JD falls seriously ill as certified by the health establishment of the district or higher level, limited legal capacity or lack of legal capacity according to the court decision.[768]

cc) The JD may be considered for exemption or reduction from the judgment execution obligation regarding state budget remittances. The JD will be exempted from the judgment execution obligation if he/she has no assets for judgment enforcement or has assets which are not allowed to be handled for judgment enforcement as prescribed by law, or has no income or has low incomes which can only ensure the minimum living standards for him/her and persons that he/she is responsible for nurturing. A JD will be reduced from the judgment execution obligation if he/she proactively paid part of court fees and fines, but suffer a prolonged difficulty-hit economic condition due to natural disasters, fire, accidents or illness which rendered them unable to execute their remaining obligation part, or have accomplished feats, may be considered for exemption from execution of their remaining obligation part.[769]

dd) Assets which must not be distrained including assets banned from circulation under law; assets used for defense service, security or public interests; assets allocated from the state budget to agencies and organizations. The assets of JDs being individuals, including quantities of food to meet essential needs of JDs and their family during the period they have no new incomes or yields; quantities of medicines needed for disease prevention and treatment for JDs and their families; necessary tools of disabled people and the tools used for taking care of sick people;

[765] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 44a, p. 261.

[766] *Nguyen, Van Nghia*: Responsibility for Providing Information about the Assets of the Judgment Debtor in the Enforcement of Civil Judgments in Europe and in Germany, Journal of Legislative Studies, Legis. No. 01/2018, p. 60-61.

[767] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 45.

[768] The LECJ, Art. 48 Para. 2 Sub-para. a.

[769] The LECJ, Art. 61 Para. 1 Sub-para. a and Para. 4.

ordinary worshipping objects according to local customs; essential working tools of small value and used as major or sole means of living of JDs and their families; utensils necessary for the daily life of JDs and their families. The assets of JDs being enterprises, cooperatives or production, business or service establishments, including the quantities of medicines needed for disease prevention and treatment for employees; food, foodstuff, tools and other assets used for serving meals for employees; kindergartens, schools, medical establishments and other equipment, means and assets owned by these establishments and used for non-commercial purposes; devices, equipment, means and tools for labor safety protection, fire and explosion prevention and fighting and environmental pollution prevention and combat.[770]

Distraint property to enforcement must ensure that the JDs and their families can maintain their stable life. For a long time ago, the protection of the basic rights of the JDs and their family in Vietnam had been provided in the legal documents. Although these legal documents are no longer valid, they still serve as a basis for the current legal regulations to inherit and improve. For example, Circular No. 4176-HCTP dated 28 November 1957 of the Ministry of Justice had guidelines needed to implement coercive measures against the JDs who could enforce the judgment but unruly, overdue to force. However, the basic rights of these debtors must be protected by law, especially the right to live and the right to work. Circular No. 4-NCPL dated 14 April 1966 of the Supreme People's Court of Vietnam instructed not to distrain objects, e.g., clothes, blankets, bedding, food and necessities of the JDs and their families as well as their relatives or worshiping. Since 1993, the Ordinance on CJE of Vietnam also regulated that assets which must not be distrained including the quantities of food to meet essential needs of JDs and their family; quantities of medicines needed for disease prevention and treatment for JDs and their families; ordinary worshipping objects according to local customs; essential working tools of small value and used as major or sole means of living of JDs and their families.[771]

Even though it is true that the civil enforcement law of Vietnam has been marginally improved in the last decades with the aim to ensure better protection of the fundamental rights of the debtors and their family. Legal provisions in relation thereof are, however, still imprecise and not sufficiently developed to be able to guarantee minimum rights of the JDs in several aspects, e.g., machinery used for studying, researching of students, children, lack of specific regulations on the protection of animals, especially rare animals in the course of enforcement. In addition, lack of necessary articles on lives and rights of JDs when they intend to

[770] The LECJ, Art. 87.

[771] Art. 24.

commit suicide because of dissatisfaction with the decision of the court. For example, on 21 July 2009, because of disagreeing with the decision of the court, during the execution of the judgment, the JD had locked the door, soaked in petrol and burnt the house, resulting in the death of the JD which happened in a province of Vietnam.[772] There is a lack of coordination mechanism on the protection of animals, especially rare animals in the course of enforcement. A lack of the coordination mechanism between CJE agencies and animal protection agencies after the distraint. In addition, there is an unclear distinction in terms of protecting the fundamental rights of the JDs and the legitimate interests of the JCs.

c) Vietnamese law on the immunity from the enforcement measures

Vietnam has ratified the 1961 Vienna Convention Diplomatic Relations on 26 August 1980 and the 1963 Vienna Convention Consular Relations on 8 September 1992. However, Vietnam has not yet ratified the 2004 Convention on Jurisdictional Immunities. Therefore, immunity from the enforcement measures in Vietnamese law is adjusted not only by the international conventions, wherein Vietnam is a contracting State, but also by the national law. Regarding the national law, there are some regulations on the immunity from the enforcement in the Civil Code 2015, the CPC 2015 and the 1993 Ordinance on the Privileges and Immunities.

State is entitled to immunities, the most important of which is the right to immunity from justice and immunity of national property, referred to as the nation's immunity. The nation's immunity in the field of civil relations involving foreign elements is recognized in many international treaties, e.g., the 1961 Vienna Convention Diplomatic Relations, the 1963 Vienna Convention Consular Relations, the Convention on Jurisdictional Immunities, and the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages, Brussels 1926.

With regards to the immunities from the enforcement measures granted to diplomatic missions, Art. 5 Para. 3 of the 1993 Ordinance on Privileges and Immunities regulates that the premises of the mission, their furnishings and other properties thereon, as well as the means of transport of the mission shall be immune from search, requisition, confiscation, attachment or execution. Furthermore, Art. 12 Para. 3 of this Ordinance also provides that no measures of execution may be taken in respect of a diplomatic agent, except in the case of a real action relating to private immovable property situated in Vietnamese territory in which he is involved as a private person; an action relating to succession in which he is involved as a private person; and an action relating to any professional or commercial activity exercised

[772] *Dang, Dinh Quyen*: Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 142-145.

by the diplomatic agent in Vietnam outside his official functions. In case of implementation of the enforcement measures, these measures concerned can be taken without infringing the inviolability of his person or of his residence. In addition, the members of the family of a diplomatic agent forming part of his household may, if they are not nationals of Vietnam, be subject to criminal, civil jurisdiction and administrative sanctions if the sending State waived these immunities expressly. However, waiver of immunity from civil or administrative jurisdiction shall not be held to imply waiver of immunity in respect of the execution of the judgment and administrative sanctions, for which a separate waiver shall be necessary.[773]

The privileges and immunities relating to consular posts from enforcement measures also apply resemble diplomatic missions, whereby, the sending State may waive any of the privileges and immunities regarding a member of the consular post. The waiver shall in all cases be express. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings to members of the consular post shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision or administrative sanctions; in respect of such measure, a separate waiver shall be necessary.[774]

Art. 17 of the 1993 Ordinance on Privileges and Immunities of Vietnam regulates that

"The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of Vietnam, enjoy the privileges and immunities specified in Art. 10 to 16 of this Ordinance".

From the Art. 5 Para. 3, Art. 12 Para. 1, 3, Art. 13 Para. 1, 3 and Art. 30 Para. 1, 3 analyzed above, together with the Art. 17 Para. 1 of the 1993 Ordinance on Privileges and Immunities, obviously that these articles on immunities from the enforcement measures are only applied to diplomats and their family members. Vietnamese law did not have formal regulations about the content of the nation's immunity. The immunities from property rights by the State ownership had not been mentioned for a long time. The 1993 Ordinance on Privileges and Immunities did not have regulations on foreign State judicial immunity as well as the nation's immunity of assets of Vietnam. Vietnam granted the immunity from jurisdiction and immunity absolute assets to foreign countries in Vietnam while Vietnam again enjoys immunity only relative abroad. As a result, Vietnam suffered more considerable disadvantages than advantages when participating in international relations. For example, in 1999, Tanzania's Mohammed Enterprises Ltd. paid the Tien Giang Province-based Thanh Hoa Company USD 1.7 million in advance for a shipment of

[773] The 1993 Ordinance on the Privileges and Immunities, Art. 13 Para. 1, 3.

[774] The 1993 Ordinance on the Privileges and Immunities, Art. 30 Para. 1, 3.

6,000 tons of rice and four rice-husking machines. The Thanh Hoa Company then rented a vessel, the Luna Brisa, to deliver the shipment, but the ship never arrived at destination. Mohammed Enterprises then took legal action against the Thanh Hoa with the relevant Vietnamese agencies, but the case is still not settled. On July 2004, the Can Gio ship, chartered by a Malaysian trader and its crew, was seized by the order of Tanzania's Supreme Court when it docked at Dar es Salaam Port in order to force Thanh Hoa to repay the sum. On 22 July 2005, Tanzania Court fined Vietnam nearly $ 2 million, including damages from rice contracts with Mohammed Enterprises and interests arising. The verdict clearly regarded the Vietnamese Government as the 12th defendant in the case. According to the court, Vietnam's legal immunity in this case was not absolute because the Vietnamese Government had actively participated in the stages of contract performance. Therefore, the Government of Vietnam, in this particular case, did not enjoy the jurisdictional immunity.[775]

From the above case, Vietnam has experienced many legal problems and suffered heavy losses from the lawsuit relating to the arrest of the Can Gio vessel on the grounds that there was a lack of domestic legislations on jurisdictional immunity and the immunities from the enforcement measures. Until now, Vietnam has not yet ratified the Convention on Jurisdictional Immunities in order to become a member of this Convention. In the coming time, Vietnamese Government should consider the ratification or accession this Convention in order to prevent similar incidents.[776]

Previously, according to the 2004 Vietnamese Civil Procedure Code, for foreign individuals, agencies and organizations that enjoy diplomatic privileges and immunities or consular privileges and immunities under the Vietnamese laws, international treaties which Vietnam has signed or acceded to, the civil cases or matter related to such individuals, agencies and/or organizations shall be settled through the diplomatic channel.[777] However, this regulation was only applied to the diplomatic missions, consular posts, representative offices of international organizations and their members and as well as members of their families.

Before 1 July 2016, Vietnam did not have formal regulations on the nation's immunity regulated in the national Codes or Acts. Before this time, Vietnam has no legal rules indicating clearly that foreign State was granted the immunity from the enforcement measures in Vietnam and, at the same time, the Vietnamese State was

[775] *Banh, Quoc Tuan*: Vietnam's Accession to UN Convention on Jurisdictional Immunities of State and Their Property, 2004, Vol. 15, No. Q1-2012, p. 74-76.

[776] *Nguyen, Van Nghia*: The Immunity Right for Enforcement Measures for Enforcement of Court Judgments, Journal of Legislative Studies, Legis. No. 18/2018, 9.2018, p. 28-29.

[777] The 2004 Vietnamese Civil Procedure Code, Art. 2 Para. 4.

granted the immunity from the enforcement measures abroad.[778] Thus, the immunity from the enforcement measures was not mentioned in the provisions of national law for a long time. Therefore, the trial or enforcement of judgments relating to judicial immunity, immunity from the enforcement measures related to the foreign parties faced many difficulties, even detrimental to Vietnam.[779]

On 1 July 2016, the new Civil Procedure Code of Vietnam took legal effect. This new Code not only inherited this regulation but also supplemented some new regulations related to the nation's immunity.[780] For example, Art. 467 Para. 2 of the CPC 2015 regulates that civil-procedure legal capacity of an international organization or its representative agency shall be determined under the international treaty based on which such organization is established, the working regulation of such organization, or the international treaty to which Vietnam is a signatory. If the international organization declares to waive its privileges or immunities, its civil-procedures legal capacity shall be determined in accordance with Vietnamese law. Or the Art. 472 Para. 1 of the CPC 2015 stipulates that Vietnamese Courts shall return lawsuit petitions or applications or terminate the settlement of civil cases involving foreign elements if such civil cases fall in the common jurisdiction of Vietnamese Courts but fall in case the defendants are eligible for legal exemption.

1 January 2017, the day on which the Civil Code 2015 took legal effect, was the first time, that the Code provides the liability for civil obligations of Vietnam, a central or local regulatory agency in civil relation, in which a foreign state, natural or juridical person is a party. Specifically, Art. 100 of the Civil Code 2015 regulates that the Socialist a Public of Vietnam, a central or local regulatory agency shall bear liability for its civil obligations arising from the following cases with a foreign state, a natural or juridical person is a party: (1) an international agreement to which Vietnam is a signatory has regulations on waiving immunity; (2) an agreement on waiving immunity concluded by the parties in such civil relation; (3) the Socialist Republic of Vietnam, the central or local regulatory agency waives the immunity. The liability for civil obligation of a foreign state, natural or juridical person with Vietnam, Vietnamese central or local regulatory agencies, natural or juridical persons shall apply similarly.

However, these regulations are general rules about the liability for civil obligations of Vietnam, a central or local regulatory agency or of a foreign state, a natural or juridical person. There were not Vietnamese regulations on nation's immunity from

[778] *Nguyen, Van Nghia*, The Immunity Right for Enforcement Measures for Enforcement of Court Judgments, Journal of Legislative Studies, Legis. No. 18/2018, 9.2018, p. 24-25.

[779] *Banh, Quoc Tuan*: Vietnam's Accession to UN Convention on Jurisdictional Immunities of State and Their Property, 2004, Vol. 15, No. Q1-2012, p. 76.

[780] The CPC 2015, Art. 2 Para. 4.

the application of civil judgment enforcement measures. The current law on enforcement of Vietnam has not yet provided for the immunity. Moreover, there exist in Vietnam no provisions that specifically regulate the procedure for implementing immunity in the enforcement proceedings, even though the international practice has long provided that

"Cases of immunity must be clearly specified in national law, particularly in respect of the state and public entities, as well as in respect of diplomatic personnel".[781]

Therefore, Vietnam needs to supplement the provisions on immunity for enforcement measures for execution of court judgments. In addition, Vietnam should research on and ratify the Convention on Jurisdictional Immunities as soon as possible.[782]

d) Legal remedies in enforcement proceedings in Vietnam

In Vietnam, so far, there has been no research documents that mention the concept of legal remedies in civil judgment enforcement procedures. However, from the above-mentioned basic features of the remedy and from the practice of Vietnamese civil judgment enforcement law, it is possible to understand that the legal remedies in enforcement proceedings in Vietnam are appeals and complaints.

aa) The first legal remedy in enforcement proceedings is the appeal

The appeal against judgments, decisions of first-instance courts under the appellate procedure is not referred within the scope of this section, because first-instance courts' judgments/decisions or parts thereof, that are appealed against shall not be enforced, except where the law requires the immediate enforcement thereof (Art. 282 Para. 1 of the CPC 2015). The judgments can be challenged by means of appeals which are judgments or decisions having taken legal effect. There are two types of appeal which could be considered as legal remedies in enforcement proceedings, including:

Firstly, the typical legal remedy against a legally effective judgment or decision is an appeal relating to mistakes of a judgment or violations of court proceedings, i.e., the conclusion in the judgment/decision is incompatible with the objective details of the cases, causing damage to the legitimate rights and interests of the involved parties; there are serious violations against procedures that prevent involved parties from executing their procedural rights and obligations, as the result, their legitimate rights and interests are not protected as prescribed in law; and there are mistakes in

[781] *The Scientific Council of the UIHJ*, Art. 26 GCE, 2016, p. 188.

[782] *Nguyen, Van Nghia*: The Immunity Right for Enforcement Measures for Enforcement of Court Judgments, Journal of Legislative Studies, Legis. No. 18/2018, 9.2018, p. 22-29.

the application of law leading to the issuance of wrong judgments/decisions, causing bad effect to legitimate rights and interests of involved parties, infringing upon public benefits, State benefits, legitimate rights and interests of the third parties (Art. 326 of the CPC 2015).

Within a year from the day on which the court's judgments/decisions takes legal effect, if legal violation in the judgments/decisions is discovered, the plaintiffs, the defendants and the persons with related interests and obligations are entitled to submit written applications to persons competent to lodge an appeal for consideration according to cassation procedures. In addition, if the courts, the procuracies or other agencies/organizations/individuals discover legal violations in the courts' judgments/decisions that are legally effective, written notifications must be sent to persons competent to lodge appeals. Besides, Chief Justices of People's Courts of the provinces shall file recommendations to the Chief Justices of Collegial People's Courts/Supreme People's Courts, the Chief Justices of Collegial People's Courts shall file recommendations to the Chief Justices of Supreme People's Courts, to review the appeals against Courts' judgments/decisions that are legally effective according to cassation procedures if any ground specified above is discovered.

Time limit for appeal, according to cassation procedures is 03 years from the day on which the court's judgments/decisions takes legal effect. If this time limit for appeal expires such time limit shall be extended by 02 years from the day on which such time limit expires if the following conditions are satisfied, i.e., the involved parties have submitted applications within a year from the day on which the court's judgments/decisions takes legal effect, if any legal violations in the judgments/decisions is discovered and maintain the application when a 3 year limit for appeal provided above has expired; courts' legal effective judgments/decisions are contrary to law as reasons for appeal, seriously affecting legitimate rights and interests of the involved parties and/or third parties, public benefits, State benefits and are subject to appeal to eliminate faults in such legally effective judgments/decisions (Art. 334 of the CPC 2015).

For example, 1.8.2016, the judgment of the first-instance court was taken legal effect. After 2 months, (1.10.2016), the defendant discovered that this judgment was rendered with serious breach of legal proceedings, adversely affecting his rights and benefits. Therefore, 2.10.2016, he submitted a written application to lodge an appeal for consideration according to cassation procedures. Normally, after 3 years (since 1.8.2019), the time limit for appeal has expired. However, because he had already submitted a written application to appeal within a year, so the time limit for appeal in this case will last up to 1.8.2021 (5 years).

What will be the solution if this judgment was completely enforced, e.g., from 9.2016, but until 1.11.2021, the Cassation Review Panels will repeal the whole of court's legally effective judgment to retry according to first-instance procedures or appellate procedures? This is one of the serious inconsistencies between the LECJ and the CPC 2015 which has been causing many difficulties for the enforcement of civil judgments in practice.[783]

Time limit for the opening of cassation review court sessions is 04 months as from the day on which the appeals and the enclosed case files are received, the courts competent to cassation review must open court sessions to review cases according to cassation procedures (Art. 339 of the CPC 2015).

During the preparation and trial of cassation review, the enforcement of judgments or decisions shall be postponed or suspended based on the decisions of the persons who are competent to appeal according to cassation procedures. The enforcement of judgments or decisions shall continue until the cassation decisions are made (Art. 332 of the CPC 2015).

Specifically, upon receiving judgment enforcement decisions suspension of persons competent to protest against judgments according to cassation procedures, heads of civil judgment enforcement agencies shall notify the judgment enforcement suspension. Therefore, according to the Vietnamese enforcement law, all the time limit for opening of cassation review court sessions and the duration of the cassation review court sessions (over 4 months), the enforcement of civil judgment will be suspended. For judgments or rulings which have been partially or completely enforced, heads of civil judgment enforcement agencies shall promptly notify such in writing to protesters. In the duration of judgment enforcement suspension due to protests, judgment debtors may bear no interest arising from the suspended judgment enforcement. Heads of civil judgment enforcement agencies shall issue a decision to continue judgment enforcement within 5 working days after the receipt of a competent person's decision to withdraw the protest or a court's cassation decision to uphold the protested judgment (Art. 49 of the LECJ).

The enforcement of cassation decisions shall be based on Art. 134 of the LECJ (enforcement of cassation rulings upholding legally effective judgments or rulings), Art. 135 of the LECJ (enforcement of cassation rulings upholding lower-level courts' lawful judgments or rulings which have been quashed or modified), and Art. 136 of the LECJ (enforcement of cassation decisions quashing legally effective judgments or rulings).

[783] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 136, p. 626.

Regulations on the time limit for appeal of legally effective judgments can be extended to 5 years and the time limit for cassation trial preparation of 4 months is too long; while the provisions on procedures for executing cassation decisions according to cassation procedures have not yet specific and clear; lack of coordination and effective exchange between judgment enforcement agencies and courts during cassation trials has led to many cases where the execution of judgments is difficult or even impossible to recover.[784] The Vietnamese enforcement law still lacks necessary provisions on the protection of rights as well as ensuring the performance of the obligations of the involved parties during the period of suspension of judgment execution.

Secondly, the second appeal against acts or decisions of heads and the executors of civil judgment enforcement agencies is the protest of people's procuracies. According to the Art. 28 Para. 8 of the Law on Organization of People's Procuracies 2014 and Art. 12 Para. 2 Sub-para. e of the LECJ, inter alia, when supervising the execution of civil judgments, people's procuracies have the right to protest against acts or decisions of heads and the executors of civil judgment enforcement agencies at the same level or lower levels. The reason for legal remedy is that whose acts or decisions involving serious violations, infringing upon the State's interests or lawful rights and interests of agencies, organizations and individuals. The time limit for procuracies at the same level or higher levels to protest is 15 days or 30 days, respectively, from the date of receipt of unlawful decisions or detection of violation acts (Art. 160 Para. 2 of the LECJ).

Unlike the first appeal, this remedy does not automatically suspend or terminate the enforcement of judgment. The people's procuracies only have right to request the termination of judgment enforcement. The enforcement of judgment will be terminated or not, which depends on the discretion of the enforcement agencies. Whereby, heads of civil judgment enforcement agencies shall have right to terminate judgment enforcement in the sense of Art. 50 of the LECJ.

bb) The second legal remedy in enforcement proceedings is the complaint

Persons have right to complain about the enforcement procedures, including JCs, JDs and persons with related rights and obligations. The legal grounds for legal remedy arise if those believe that the decisions or acts of heads of civil judgment

[784] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 135, p. 621-622; *Hoang, Thi Thanh Hoa*: Trial procedures at cassation review court sessions should closely associated with the process of civil judgment enforcement, Vietnam Law Newspaper Online, 23 October 2019, available at: https://baophapluat.vn/tu-phap/giam-doc-tham-tai-tham-can-lien-ket-chat-che-voi-qua-trinh-to-chuc-thi-hanh-an-dan-su-476315.html.

enforcement agencies or executors are illegal or having infringed upon their rights and legitimate interests (Art. 140 Para. 1 of the LECJ).

Statute of limitations for lodging complaints about such decisions or acts is various depending on different enforcement decisions, i.e., fifteen days after receiving decisions or knowing acts, for judgment enforcement decisions or acts before the application of security or coercive measures; three working days after receiving decisions, for decisions on the application of the measure of blockading accounts; ten days after receiving decisions or knowing acts of the application of other security measures; thirty days after receiving decisions or knowing acts of application of coercive measures; thirty days after receiving decisions or knowing acts after application of coercive measures. In case due to objective obstacles or force majeure circumstances, complainants cannot exercise the right to lodge complaints within the set time limit, the period when these objective obstacles or force majeure circumstances exist will not be counted into the time limit for lodging complaints. For further complaints, the statute of limitations is 15 days after receiving competent persons' complaint settlement decisions (Art. 140 Para. 2 of the LECJ).

According to the Art. 146 of the LECJ, time limits for settlement of complaints are different based on enforcement decision, i.e., (1) for judgment enforcement decisions or acts before the application of security or coercive measures, the time limits for settlement of first-time and second-time complaints are 15 days and 30 days, respectively, from the date of acceptance of complaints; (2) for decisions on the application of the measure of blockading accounts or decisions on the application of other security measures, the time limit for settlement of complaints is 5 working days from the date of acceptance of complaints; (3) for decisions or knowing acts of application of coercive measures, the time limits for settlement of first-time and second-time complaints are 30 days and 45 days, respectively, from the date of acceptance of complaints; (4) for decisions or knowing acts after application of coercive measures, the time limits for settlement of first-time and second-time complaints are 15 days and 30 days, respectively, from the date of acceptance of complaints; (5) for cases in deep-lying and remote areas which are difficult to access or complicated cases, the time limit for settlement of complaints may be prolonged but must not exceed 30 days from the expiration of the original time limit.

When necessary, for complicated cases, the time limit for complaint settlement may be prolonged but must not exceed 30 days after the expiration of the original time limit.

From the above analysis, the maximum time limit for settling a complicated complaint in a remote area may be up to 165 days from the date of acceptance of the first complaint.

During the period of the complaint settlement about judgment enforcement, persons with complaint-settling competence have the right to suspend the enforcement of complained decisions or performance of complained acts or request civil judgment enforcement agencies to suspend judgment enforcement, if they believe that the judgment enforcement will affect rights and legitimate interests of the involved parties or the settlement of complaints (Art. 145 Para. 1 Sub-para. b of the LECJ). Depending on wrong decisions or illegal acts of executors at the civil judgment district lever, the provincial level, or at the General Department of Civil Judgment Execution, persons with complaint-settling competence are heads of district-level civil judgment enforcement agencies, heads of provincial-level judgment enforcement agencies, the General Director of the Civil judgment Execution of the Justice Ministry, and the Justice Minister (Art. 142 of the LECJ).

The length of settling a complaint is too long (may be up to 165 days), while in fact the complainants (JDs) often take advantage of this time period to delay the enforcement of judgment or dispersing or shirking the judgment enforcement. They could not abide the effective complaint settlement decisions without suffering any legal sanctions because the law of enforcement has not clearly defined their legal obligations if they make false claims.[785] Therefore, the number of wrong complaints (complaints were incorrect or without legal grounds) accounts for a large proportion. For instance, according to statistics in 2019, the entire civil judgment execution system on the national scale received 4657 complaints, of which 2607 legitimate complaints were resolved. Among the resolved complaints, there were 1628 completely wrong complaints, only 183 complaints totally correct, and 165 complaints partly correct.[786]

In comparison to the international requirements (adequate, effective and prompt legal remedies), clearly that legal remedies in enforcement proceedings in Vietnam are complicated systems, in which enforcement procedures are mainly suspended because of the appeal or complaint, complaints mechanism is ineffective and lengthy processes and delays.

In Germany, there are two successive forms of appellate remedy against the ruling of the first instance court, i.e., appeal (§ 511 (1) et seq. ZPO) and revision (§ 542 et seq. ZPO). Besides, in order to guarantee a legal protection, fair trial and the access to justice to anybody whose civil rights and obligations are affected by a court decision or any other court acts in civil law proceedings, ZPO provides for several

[785] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 144-145, p. 658-661.

[786] *The General Department of Civil Judgment Enforcement*: Complaints in civil judgment enforcement and sanctions against wrong complainants (without legal grounds), https://thads.moj.gov.vn/noidung/tintuc/Lists/NghienCuuTraoDoi/View_Detail.aspx?ItemID=939.

other legal remedies, i.e., action for performance (*"Leistungsklage"*), which is a specific performance, payment or damages; action for declaratory judgments (*"Feststellungsklage"*), which is seeking a declaration of the existence or non-existence of a legal relationship between a person and an object or between the parties (§ 256 ZPO); and an action for alteration of a legal relationship (*"Gestaltungsklage"*), which can change an existing legal relationship by way of judgment (§§ 323, 722, 727, inter alia, ZPO).[787]

Based on the German principle of formalization, remedy system in enforcement proceedings in Germany, including remedies against the violation of formal requirements and remedies against the violation of material requirements. Remedies against the violation of formal requirements apply, if the formal requirements of the enforcement are not met, e.g., violating regulations on seizure of judgment execution assets (§ 811 ZPO) or the violation of any provision on formal requirements and on an accomplishment the enforcement procedure itself (§ 766 ZPO).[788] Remedies against the violation of material requirements provide for a correction, if the requirements in accordance with the principle of formalization do not match the requirements of substantive law. The competence to prove this does not lie with the enforcement court but with the trial court.[789]

To achieve the substantive law that overrules the requirements of the principle of formalization, the German remedy system offers different legal actions, i.e., the action to oppose enforcement (*"Vollstreckungsgegenklage"*), a third-party proceeding instituted to prevent the execution of a judgment (*"Drittwiderspruchsklage"*), and the action for the preferential satisfaction (*"Klage auf vorzugsweise Befriedigung"*).[790] The action to oppose enforcement enables the JD to raise questions of substantive law against the title of the judgment. The lawsuit against the JC is not intended to prevent an enforcement measure, but to eliminate the enforceability of the enforcement order under § 767 ZPO.[791] A third-party complaint (objection or intervention) according to § 771 ZPO enables a third party to defend himself against the enforcement of his assets. The third party must be granted this right because the enforcement agency does not regularly check whether the object of enforcement belongs to the debtor's assets, e.g., the ownership of the debtor

[787] *Wolf, Christian/Volkhausen, Luisa/Zeibig, Nicola*: Cross Border Enforcement of Monetary Claims-Interplay of Brussels I A Regulation and National Rules, National Report: Germany, p. 22.

[788] *Wolf, Christian/Volkhausen, Luisa/Zeibig, Nicola*: Cross Border Enforcement of Monetary Claims-Interplay of Brussels I A Regulation and National Rules, National Report: Germany, p. 24 and *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1160-1162, p. 585.

[789] *Wolf, Christian/Volkhausen, Luisa/Zeibig, Nicola*: Cross Border Enforcement of Monetary Claims-Interplay of Brussels I A Regulation and National Rules, National Report: Germany, p. 27.

[790] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1311, p. 636.

[791] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1312, p. 639.

concerning the attached object of the enforcement.[792] With the action for preferential satisfaction under § 805 ZPO, the owner of a property right without a lien or preferential right to a movable item can be satisfied by proceeds from the sale of this item before it is distrained.[793]

II. Ensuring the autonomy and flexibility of the enforcement agent and judicial officer

1. The international regulations on the autonomy and flexibility of the enforcement agent and the judicial officer

The term "autonomy" means *the right of self-government, which is the state of being self-controlled.*[794] Meanwhile, "flexibility" means *the ability to change or be changed easily according to the situation*.[795] Under Art. 28 GCE, the judicial officer or the enforcement agent autonomously implements the measure most appropriate to the rights of the creditor and the basic rights of the debtor. Relating to the autonomy of the enforcement agent, the Guidelines for a better implementation of enforcement of 17 December 2009 also requires that, member states should ensure that the legal framework of enforcement is unnecessarily prolonged. Member states are encouraged, in particular, to ease the procedural enforcement framework so that their enforcement agents are given the necessary autonomy to choose for themselves, without prior authorization, the procedural steps that are the most appropriate for the case in question.[796] In addition, enforcement agents should be responsible for the conduct of enforcement within their scope of competences stipulated by their national laws respectively. Member states should consider giving enforcement agents sole competence for enforcement of judicial decisions and other enforceable titles or documents, and implementation of all the enforcement procedures provided for by the law of the state in which they operate.[797]

To ensure the flexibility of the enforcement measures, member states should organize their enforcement systems by adapting them to the interests of the creditor and the economic and social situation of the debtor. For this reason, they must diversify the enforcement measures so that the judicial officer or enforcement agent may choose among them in keeping with the circumstances.[798] Enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These codes of conduct should *inter alia* contain

[792] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1396, p. 681; and also see § 1006 BGB.

[793] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1451, p. 704.

[794] *Garner, Bryan A.*: Black's Law Dictionary, 8th ed., 2004, p. 145.

[795] https://dictionary.cambridge.org/dictionary/english/flexibility.

[796] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 67.

[797] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 33.

[798] The GCE, Art. 29.

professional standards regarding procedural flexibility (autonomy of enforcement agents, etc.).[799] Furthermore, it is the responsibility of the enforcement agent to take all reasonable and necessary steps in enforcement and to decide which enforcement action is most appropriate. In cases where the costs are considered irrelevant or wrongfully incurred, these costs should be borne by the enforcement agent.[800]

Flexibility regarding the nature of the goods should also be considered. Art. 30 GCE regulates that member states shall adapt the measures of execution to legal status of the seized assets. In addition, member states should also set forth clear and precise criteria regarding the reasonable nature of the duration, which could vary according to the nature of the case and the type of action requested.[801] In other words, member states should be equipped with a legislative arsenal comprising enforcement procedures geared to all the types of obligations liable to be established in an enforceable title (obligations to pay, to do or to refrain from doing) and the varied composition of people's assets (moveable or immovable assets, tangible or intangible assets, registered or non-registered assets).[802]

Relating to the enforcement in kind, Art. 31 GCE stipulates that

"When a judge directs the performance or non-performance of an obligation, he must be able to accompany his judgment with a constraint measure".[803]

This provision refers to the relationship between the trial stage or adjudicating procedure and the enforcement process, ensuring the enforceability of the judgment in practice. This is in line with the Opinion No. 13 (2010), which states that enforcement should be understood as putting into effect judicial decisions and other judicial or non-judicial enforceable titles. It may involve and order to do, to refrain from doing something, and to pay what has been adjudged.[804] Furthermore, for the purpose of swift, smooth and prompt actions in the enforcement process, the court decisions must be precise and clear, determining the obligations and rights engaged, in order to avoid any obstacle to effective enforcement.[805]

It should be noted that, due to the variety of the assets, as well as the nature and the characteristics of the property subjecting to enforcement, it is necessary and of crucial importance to the enforcement measures. Thereby, it provides a wide range of options for the ECJs, increasing the autonomy and self-determination of the enforcement agents.

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[799] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 38.

[800] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 57.

[801] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 64.

[802] *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 36.

[803] The GCE, Art. 31.

[804] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 6.

[805] *The CCJE*: Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, Opinion 9.

2. Vietnamese legal provisions for the autonomy and flexibility of the enforcement agent and the judicial officer

At present, both enforcers and private bailiffs in Vietnam are responsible for the ECJs and rulings prescribed in the Art. 2 of the LECJ.[806] In the judgment execution procedure, courts have very limited roles, e.g., they have competence in considering the exemption or reduction of the judgment execution obligation regarding state budget remittances, or explaining in writing unclear contents of pronounced judgments or rulings under the requests of involved parties or CJE agencies.[807] In addition, the Chief Justice of the Supreme People's Court and the Chief Justices of the Collegial People's Courts have competence to appeal against legally effective judgments or decisions of courts may request the postponement of judgments or decisions in order to consider the appeals according to cassation procedures.[808] The postponement of judgment enforcement shall comply with legal regulations on civil judgment execution. Persons who have appealed according to cassation procedures legally effective judgments or decisions shall have the right to decide on the suspension of enforcement of such judgments or decisions until the cassation decisions are made.[809] According to the Vietnamese law on enforcement, the involved parties, including both the JC and the JD (Art. 3 Para. 1 of the LECJ) have the right to request enforcers applying measures to secure judgment enforcement in order to prevent dispersal or destruction of assets or shirking of judgment enforcement.[810] Measures to secure judgment enforcement include blockading accounts; seizing assets and papers; and suspending registration, transfer or change in the current state of assets.[811]

As analyzed in Chapter 1. V. 2. e), within 5 years after a judgment or ruling takes legal effect, the JC and JD may request a competent CJE agency to issue a judgment enforcement decision.[812] After the time limit for the voluntary execution of the judgment, if the JDs do not voluntarily execute, all appropriate and necessary coercive measures may be applied for enforcement of judgments. Art. 71 of the LECJ makes a list of several coerce judgment enforcement, i.e., deduction of money on accounts, recovery and handling of money and valuable papers of JDs; subtraction of incomes of JDs; distraint and handling of assets of JDs, including also those held by third parties; exploitation of assets of JDs; forcible transfer of objects, property

[806] The LECJ, Art. 17 Para. 1, Decree No. 61/2009/ND-CP and Joint Circular No. 09/2014/TTLT-BTP-TANDTC-VKSNDTC-BTC. More detail sees B. Chapter 2. I. 1. c.

[807] The LECJ, Art. 62 and Art. 179.

[808] The CPC 2015, Art. 331 Para. 1, 2.

[809] The CPC 2015, Art. 332.

[810] The LECJ, Art. 66 Para. 1 S. 1.

[811] The LECJ, Art. 66 Para. 3.

[812] The LECJ, Art. 30 Para. 1.

rights and papers; and forcible performance or non-performance of certain jobs by JDs.

The remaining question is, how many coercive civil enforcement measures are reasonable, and which are the measures and the scientific basis of the coercive enforcement measures? A recent research results have shown that coercive enforcement measures in Vietnam derive from the implementation of civil obligations.[813] There is a close relation between the civil obligations and the coercive enforcement measures. The Civil Code 2005 previously stipulated that a civil obligation is a task under which a subject or more than one subject (obligors) must transfer an object, transfer rights, pay money or return valuable papers, perform other tasks or refrain from doing a certain task in the interest of one or a number of other subjects (obliges).[814] Since 2015 this Code was replaced by the new Civil Code. Art. 274 of the Civil Code 2015 currently provides that

"Obligation means acts whereby one or more entities (obligors) must transfer objects, transfer rights, pay money or provide valuable papers, perform other acts or refrain from performing certain acts in the interests of one or more other subjects (obliges)".[815]

Based on the provisions of this Code on civil obligations, there are respectively coercive enforcement measures providing in the LECJ, e.g., deduction of money from accounts (Art. 76); subtraction of incomes of JDs (Art. 78); collection of money from business activities of JDs (Art. 79); seizure of valuable papers (Art. 82); distraint, use and exploitation of intellectual property rights (Art. 84); coercive performance of the obligation to do certain jobs (Art. 118); coercive performance of the obligation not to do certain jobs (Art. 119); etc. Presently, Vietnam is applying a wide range of coercive measures for enforcement; however, its effectiveness is not satisfactory. Therefore, Vietnamese Government should pursue policies that promote compliance; the need for coercive enforcement of judgments should be the exception rather than the rule.[816]

According to the LECJ, executors are entitled to choose coercive measures to enforce civil judgments. However, they are not fully given the necessary rights to enforce effectively judgments, e.g., the right to search persons, the right to examine places to seize money, properties for the purpose of the enforcement of judgments.[817]

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[813] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 39.

[814] Art. 280.

[815] Art. 274.

[816] *Fariello, Frank/Boisson de Chazourmes, Laurence/E. Davis, Kevin*: The World Bank Legal Review, Vol. 7, p. 253.

[817] *Le, Anh Tuan*, Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 83.

Many previous studies have also shown that due to various reasons, the execution of court judgments and decisions has been delayed, affection to the legitimate rights and interests of the involved parties. The main reason is because of the lack of the autonomy and flexibility of the executors and the enforcement agents in selecting the method of organizing the enforcement of judgments.[818]

As analyzed in chapter 2, if the JD has money, gold, or other precious metals and stones, either in storage or on the person, but according to the provisions of the current law, the executors have no right to search the person, or explore places in order to seize the cash or assets.[819] Executors are not entitled to scrutinize the persons or places where the property of the JDs is located, while the law has not yet had another effective solution. Consequently, the effectiveness and efficiency of the enforcement measures in these cases are insufficient.[820]

In addition, the provisions on coercive enforcement measures are not derived from the nature of each type of assets. Enforcement laws have not yet regulated the enforcement measures applicable to all types of the assets subject to the judgment execution. For example, there are not enough specific regulations on coercive judgment enforcement measures applying for the property being petted (domestic pets, wild animals, etc.).[821] In fact, there is a lack of regulations on agencies or organizations responsible for receiving management and caring for livestock, management fees and animal husbandry. No specific provisions on enforcement of judgments against the property of fresh, perishable, etc. Meanwhile, the population of Vietnam was over 90 million people in 2012.[822] This number will rise over 97 million people in 2019.[823] In which the majority of the population lived off farming.[824] Thus, the executors have encountered with many difficulties when implementing the judgments relating to agriculture, e.g., plants or animals.

Finally, under the current Vietnamese legal system, trial stage and enforcement proceeding are two (almost entirely) separate processes; judges are responsible for the trial, whereas executors and private bailiffs perform duties relating to the

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[818] *Nguyen, Van Nghia,* (*penname Thi Lien Mai*): Independence Enhancement in the Operation of Judgement Execution Bodies, Democracy and Law Journal, 2006, p. 34-35; *Van Nghia, Nguyen*: Executors-What Powers do they need? Democracy and Law Journal, the Ministry of Justice of Vietnam, Vol. 7/2008, p. 38; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia,* Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 167.

[819] See B. Chapter 2. I. 2. b) c).

[820] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 116, p. 549-552.

[821] See C. Chapter 3. I. 2. b).

[822] *Tim Lindsey/Pip Nicholson*: Drugs Law and Legal Practice in Southeast Asia (Indonesia, Singapore and Vietnam), 2016, p. 203.

[823] http://worldpopulationreview.com/countries/vietnam-population/.

[824] http://factsanddetails.com/southeast-asia/Vietnam/sub5_9g/entry-3480.html; *Vo, Tong Xuan*: Changing the life of the Vietnamese farmers, 2005, p. 1.

judgment execution.[825] Judge is almost not involved in the enforcement proceedings, so when he directs to the performance or non-performance of an obligation, he may not be able to accompany his judgment with a constraint measure. In many cases, the court judgments or rulings are practically inappropriate and some even are unenforceable. The following case provides a striking example.[826]

Judgment No. 251/2013/DS-PT dated 12 August 2013 of the Appellate Court of the Supreme People's Court in H city with the following contents: The debtor S locates at 235/N34, H city, is responsible for assigning the house at address 235/N34, H city to the creditor G under the house purchase contract, which two sides have signed including the house located on the plot of land that has been licensed.

After verification, executors noticed that the house at the address 235/N34, H city was not only located on the plot of land that has been licensed in accordance with the judgment but also on the part of land encroachment 10 m^2 (not specified in the judgment). The area 10 m^2 encroached lands were located at the main entrance and the side door of the house. The debtor S did not want to hand over 10 m^2 of the encroached land to the creditor G because it was not stated in the judgment while the creditor G cannot receive the house without the entrance to the main door.

On 18 March 2014, the CJE Department of H city has sent an official dispatch requesting the court to explain. On 20 March 2014, the Appellate Court of the Supreme People's Court explained as follows: According to the house sale contract between the seller S and the purchaser G, the two parties agreed to return this area of encroachment to the L school when the school required. Therefore, the debtor S not only had to hand over the house on the land that had been licensed but also had to hand over the land encroached to the creditor G. However, the creditor G must return the encroached land to the L school when the school reclaims.

To request the CJE Department of the H city to execute the appellate judgment on the unlicensed encroachment area outside the land area stated in the house sale and purchase agreement between the creditor G and the debtor S as above contents, the executor of the CJE Department of H city issued a decision on coercive judgment enforcement in accordance with the contents of the court's interpretation and continue to enforce the judgment.

[825] *Nguyen, Van Nghia*: Implementation of Judicial Renovation in Civil Judgment Execution, Democracy and Law Journal, Vol. 7/2009, p. 37, 38; *Nguyen, Van Nghia*: New organizational model of civil judgment enforcement sector after one year of implementing the 2008 Law on Civil Judgment Execution, Democracy and Law Journal 2010, p. 13-27; *Nguyen, Van Nghia*: Civil judgement Law after two years Implementing, Democracy and Law Journal, Vol. 4/2012, p. 10-13.

[826] *Le, Anh Tuan*: Some Theoretical and Practical Issues on the Coercive Enforcement of Civil Judgments in Vietnam, PhD. Dissertation, 2017, p. 115-116.

However, on 8 April 2014, the People's Procuracy of H City issued No. 79/KSTHADS/QD to protest the decision on coercive judgment enforcement issued by the executor. The reason for the appeal is that the contents of the court's explanatory statement exceed the contents of the court's decision. As a result, the judgment has been suspended and has not been enforced.

The role of judge is unclear in the course of the coercive enforcement of judgments. There is a conflict between the legal regulations on the responsibilities of the judges relating to the enforcement affairs. For example, under the CPC 2015, disputes relating to properties forfeited to enforce judgments in accordance with the LECJ are one of the civil disputes falling under the courts' jurisdiction.[827] Furthermore, this Code also regulates that the petition for determination of property ownership and use rights, division of common properties for enforcement of judgments in accordance with regulations in the LECJ are one of the civil petitions falling under the courts' jurisdiction.[828] In Vietnam, the people's court system of district level has its chief justice, deputy chief justices, presidents and vice presidents of tribunals, judges, court clerks, examiners in charge of judgment enforcement, etc.[829] Examiners must be professional civil servants of the courts who have worked as court clerks for at least 5 years and have been professionally trained and appointed to work as examiners.[830] Regrettably, this law stipulates that judgment execution examiners of the courts only must be professionally trained on examiner without professional training on professional execution.[831] The examiner in charge of judgment enforcement shall assist the chief justice in performing his/her judgment enforcement duties under the jurisdiction of his/her court.[832] The role of the examiner in charge of judgment enforcement of the court is still limited. In addition, the LECJ has not yet specified the responsibility of judges during the period of CJE. Therefore, some tasks that relating to the enforcement works should have been performed by the judges are currently granted and carried out by the executors.[833] For instance, the seizure of property under joint ownership of the JD and other people is regulated in Art. 24 Para. 2 Sub-para. c of the Decree No. 62/2015/ND-CP.[834] Under this article, executor is empowered to apply the law to determine the legal issues related to property rights that should fall under the jurisdiction of the judge. Meanwhile, mentioning to the role of judges in the course of coercive ECJs, Report No. 63/BC-

[827] Art. 26 Para. 12.

[828] The CPC 2015, Art. 27 Para. 9.

[829] Art. 45 Para. 3.

[830] The 2014 Law on Organization of People's Court, Art. 93 Para. 1.

[831] See more about the training requirements for procurator, B. Chapter 2. II. 3.

[832] The 2014 Law on Organization of People's Court, Art. 93 Para. 4 Sub-para. c.

[833] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 7, 7a and 7b, p. 70-74.

[834] See B. Chapter 2. I. 1. d) bb) (2).

BTP emphasized that there are no regulations requiring the court to clarify conditions for judgment execution before issuing judgments or decisions.[835]

3. Limitations of the enforcement law of Vietnam on the autonomy and flexibility of the enforcement agent and the judicial officer

Autonomy and flexibility play a vital role in enhancing the effectiveness and efficient enforcement of judgments. That is one of the convincing reasons why the GCE sets up at least three articles per 34 articles in total providing about the autonomy and flexibility of the judicial officer and the enforcement agent. Accordingly, the enforcement agent autonomously implements the measure most appropriate to the rights of the creditor and the basic rights of the debtor.[836] Depending on the interests of the creditor and the economic, social situation of the debtor, states must diversify the enforcement measures so that the enforcement agent may choose among them in keeping with the circumstances.[837] States should provide flexible executing methods concerning to the nature of the goods.[838] These regulations on the autonomy and flexibility of the executor are almost entirely new to the Vietnamese legal system.

In Vietnam, the time limit for voluntary execution of a judgment is 10 days.[839] Upon the expiration of this time limit, JDs with judgment execution conditions who fail to voluntarily execute judgments shall be coerced to do so.[840] Depending on different types of judgments and decisions, the specific provisions of each coercive measure shall be specified by law. Unfortunately, the autonomy and flexibility of the executors have not yet been regulated in the LECJ. However, the autonomy and flexibility of the executors just only mentioned in a few provisions of the Decree No. 62/2015/ND-CP of the Government.[841] In fact, the autonomy and flexibility of the executor is very limited in the enforcement process.[842] Here are a certain number of vivid illustrations:

a) Some rights of request of the judgment enforcer in the process of executing the judgment are not suitable

Many provisions on the right to request of the judgment enforcer in the process of executing the judgment is unnecessary and only making the enforcement procedure

[835] Report No. 63/BC-BTP, p. 16.

[836] The GCE, Art. 28.

[837] The GCE, Art. 29.

[838] The GCE, Art. 30.

[839] The LECJ, Art. 45 Para. 1.

[840] The LECJ, Art. 46 Para. 1.

[841] Decree No. 62/2015/ND-CP, Art. 13 Para. 1 and C. Chapter 3. I. 2. a)

[842] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 165-168.

more complicated and prolonging the enforcement time, sometimes it becomes a burden, responsibility for executor.[843] There are a lot of evidences justifying to these problems.

Firstly, Decree No. 62/2015/ND-CP stipulates that

"When conducting a verification, the judgment enforcer has to request the JD to provide truthful and adequate information about his/her property, income, and capacity for CJE…".[844]

This provision may lead to the risk that debtors will not voluntarily declare information about his/her assets until the distraining period. Because they believe that it is the duty of the executor. When conducting a verification, if the executor asks them to declare information about their property, then they may perform. By contrast, if the executor does not request it, they may not perform it and assume it is the fault of the executor. Because the law has not clearly defined the starting time when the JD is obliged to declare information on the property, so the JDs have taken advantage of this article to delay the enforcement proceedings. Some enforcement cases, executor may be protested by the People's Procuracies or complained by the involved parties.[845] At this point, the right of executor has inadvertently become his obligation, similarly the obligation of the JDs. The limitation of this provision seems contradictory and inconsistent with international standards, according to which

"The powers and responsibilities of enforcement agents should be clearly defined and delineated in relation to those of the judge".[846]

Concerning to the time limit for providing information about the assets of the debtor, ZPO stipulates clearly that

"By way of taking information on the debtor's financial circumstances and assets, the bailiff shall set a deadline of two weeks, within which the debtor is to settle the claim. For the case that the claim has not been fully settled following the expiry of the deadline, the enforcement enforcer shall concurrently arrange a meeting for a date shortly after the expiry of the deadline, on which the information on the debtor's financial circumstances and assets is to be provided and shall summon the debtor to his offices for such meeting. The debtor is to produce the documentation required for proving information on his financial circumstances and assets at the meeting. The deadline set out in the first sentence is not required if the bailiff has already

[843] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*, Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 165-168.

[844] Decree No. 62/2015/ND-CP, Art. 9 Para. 1.

[845] The LECJ, Art. 12 Para. 2; *Dinh, Duy Bang*: Some Issues about the Powers of the Enforcer, 2018.

[846] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV. 5.

requested payment from the debtor and two weeks have elapsed without any request has been successfully implemented".[847]

It is clear from the German law that, providing information about the debtor's assets is the first responsibility of the JD. If he/she does not provide or provide inadequate information about his/her assets, the bailiff or court officers will apply the sanctions against him/her.[848]

Secondly, executor requests involved parties to reach agreement on reduction of asset prices. According to the LECJ:

"Within 5 working days after receiving the auctioneering organization's notification that there is no bidder for assets put up for first-time auction or auction is unsuccessful, the enforcer shall notify and request involved parties to reach agreement on reduction of asset prices. Within 10 days after receiving the notification, if involved parties do not agree or cannot reach agreement on reduction of asset prices, the enforcer shall decide on reduction of asset prices for further auction".[849]

This provision is unnecessary, as it only ineffectively extends the enforcement proceedings, because the agreement between the involved parties is provided in the Art. 6 of the LECJ, as follows:

"Involved parties may reach agreement on judgment enforcement, provided that agreement does not violate the prohibitions prescribed by law and is not contrary to social morality".

In addition, if the enforcer fails to exercise the right to request the involved parties to reduce the asset price, the executor may be subject to a protest or a recommendation of the procuracy for violating the enforcement procedures.[850]

Thirdly, some provisions on the right of the request of the executor in the process of executing judgment are inappropriate and in practice the implementation of these rights of the executor is ineffective or is delayed because it is not guaranteed by the appropriate sanctions.[851] For example, requesting concerned agencies, organizations and individuals to supply documents for the verification of addresses and assets of JDs; requesting involved parties, and related agencies, organizations and individuals to provide necessary papers and documents to prove their ownership and use rights

[847] § 802f (1) ZPO which has been valid since 26.11.2016.

[848] *Nguyen, Van Nghia*: Responsibility for Providing Information about the Assets of the Judgment Debtor in the Enforcement of Civil Judgments in Europe and in Germany, Legis. No. 01/2018.

[849] The LECJ, Art. 104 Para. 1.

[850] The LECJ, Art. 12; *Dinh, Duy Bang*: Some Issues about the Powers of the Enforcer, 2018.

[851] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 165-167.

of such assets and papers; requesting registration offices to supply information on assets or registered transactions before distraining assets being land use rights are subject to compulsory ownership or security transaction registration under law; or requesting JDs or current managers of land use rights-related papers to supply these papers to CJE agencies upon distraint of land use rights.[852] It is insisted that the enforcement law of Vietnam in some aspects is not in line with the general standard of international practice when defining the rights and responsibilities of the executor. For example, the status, role, responsibilities and powers of the enforcement agent should be prescribed by law in order to bring as much certainty and transparency to the enforcement process as possible.[853] The powers and responsibilities of the enforcement agents should be clearly defined and delineated in relation to those of the judge.[854] In contrast, some powers and responsibilities of the Vietnamese executors are not completely prescribed by laws, but mainly by the decrees of the Government. Sometimes, the decrees of the Government conflict with the law of enforcement when stipulating the same content. For instance, Decree No. 62/2015/ND-CP requires the judgment enforcer must request the JD to provide truthful and adequate information about his/her property, but meanwhile providing truthful and adequate information about his/her property is the responsibilities of the JDs under the Art. 7a Para. 2 Sub-para. b of the LECJ as analyzed above.

b) Authority responsible for inspection, supervision and control of the enforcement activities

Under the provisions of current law, in Vietnam, the executors are subject to inspection and supervision by many different state agencies and they have to report to a large number of state agencies, as follow:

(1) The National Assembly, People's Councils and the Vietnam Fatherland Front shall supervise the operation of CJE agencies and other state agencies in enforcing civil judgments under law (Art. 12 Para. 1 of the LECJ);

(2) People's Procuracies shall supervise the law observance by courts, CJE agencies, enforcers and agencies, organizations and individuals involved in CJE (Art. 12 Para. 1 of the LECJ);

(3) The Provincial-level and the District-level CJE agencies have to report on CJE to the People's Councils and People's Committees in accordance with law, and report on results of enforcement of judgments and decisions to courts upon request (Art. 14, 16 Para. 7 of the LECJ);

[852] The LECJ, Art. 20 Para. 4, Art. 68 Para. 4, Art. 69 Para. 3, Art. 89 Para. 1, and Art. 111 Para. 1.

[853] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.2.

[854] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle IV.5.

(4) In CJE, the Provincial-level and District-level People's Committees have tasks and power to direct the organization of coercive enforcement of judgments or decisions for big and complicated cases impacting political security and social order and safety in their localities at the request of Heads of Provincial-level CJE Agencies (Art. 173, 174 Para. 2 of the LECJ);

(5) The Inspectorate of the Ministry of Justice in coordination with the General Department of Civil Judgment Execution shall guide, inspect and request local CJE agencies to receive citizens, settle complaints and denunciations, anti-corruption;[855]

(6) The General Department of Civil Judgment Execution has responsibility in examining the implementation of the order, procedures and application of laws in civil judgment execution activities; etc..[856]

Above analysis has indicated that the executors have to suffer from a lot of inspections and supervisions and they also have to make many kinds of reports, e.g., report on annually, yearly, half-yearly, quarterly, monthly or upon unexpected request, etc. In Vietnam, executors are under the pressure not only from the involved parties but also inhibited by a numerous of state agencies intervening in judgment execution activities.[857] Specifically, all enforcement procedures and the implementation of the obligations and powers of the executor being too closely and strictly supervised by the People's Procuracies may also restrict the autonomy and flexibility of the executor. All enforcement activities are under the control of the People's Procuracies and other competent agencies, e.g., supervising the issuance, handover, interpretation and correction of court judgments or decisions; supervising directly judgment enforcement by CJE agencies at the same or lower level, enforcers and related agencies, organizations and individuals; supervising judgment execution dossiers; supervising operations of agencies, organizations and individuals involved in judgment execution; requesting courts and CJE agencies at the same and lower levels, enforcers, and agencies, organizations and individuals involved in judgment execution to issue judgment enforcement decisions in accordance with law; to execute judgments and decisions in accordance with law; to conduct self-inspection of judgment execution and notify self-inspection results to People's Procuracies; etc.[858]

In addition, the chairperson of the Supreme People's Procuracy shall be competent to appeal, according to cassation procedures against the legally effective judgments or decisions of the Collegial People's Court; legally effective judgments or decisions

[855] Decision No. 285/QD-BTP, Art. 4 Para. 4 Sub-para. d.

[856] Decision No. 61/2014/QD-TTg, Art. 2 Para. 5 Sub-para. b.

[857] *Dang, Dinh Quyen*, Effective Application of the Law in Civil Judgment Execution in Vietnam, PhD. Dissertation, 2012, p. 152.

[858] The 2014 Law on Organization of People's Procuracies, Art. 28.

of other courts when it is deemed necessary, except for cassation decisions of the council of judges of the Supreme People's Court.[859] The Chairperson of the Collegial People's Procuracy shall be entitled to appeal, according to the cassation procedures against legally effective judgments or decisions of the People's Courts of Provinces or the People's Courts of Districts within the territorial competence.[860] And Art. 332 of the CPC 2015 stipulates the postponement and suspension of enforcement of legally effective judgments or decisions as follow:

"1. Persons who are competent to appeal against legally effective judgments or decisions of Courts may request the postponement of enforcement of judgments or decisions in order to consider the appeals according to cassation procedures. The postponement of enforcement of judgments shall comply with law regulations on civil judgment execution. 2. Persons who have appealed according to cassation procedures legally effective judgments or decisions shall have the right to decide on the suspension of enforcement of such judgments or decisions until the cassation decisions are made."

Both Art. 331 and 332 of the CPC 2015 have specified that not only the Chief Justice of the Supreme People's Court and the Chief Justices of the Collegial People's Courts but also the Chairperson of the Supreme People's Procuracy and the Chairperson of the Collegial People's Procuracies have rights to request the postponement of enforcement of judgments or decisions and to decide on the suspension of enforcement of judgments or decisions. Meanwhile, according to international standards, the authority to consider postponement of execution should be fulfilled only by the court. Specifically, Recommendation Rec (2003)17 of 9 September 2003 states that there should be no postponement of the enforcement process unless there are reasons prescribed by law. A postponement may be subject to review by the court.[861]

A summary Report of the 4-year implementation of the 2008 Law on Enforcement of Civil Judgments has shown that failure to clearly define the nature of the enforcement procedures is administrative procedure or judicial procedure has led to the enforcement procedures placed under the control and supervision of many organs, organizations and individuals.[862] This has caused considerable difficulties for the operation of the CJE agencies, affecting the independence of the CJE agencies.[863] This summary Report also addressed that lack of tight and strict regulations on

[859] The CPC 2015, Art. 331 Para. 1.

[860] The CPC 2015, Art. 331 Para. 2.

[861] *The Committee of Ministers of the CoE*: Recommendation Rec (2003)17 of 9 September 2003, Principle III.1.f.

[862] Report No. 63/BC-BTP, p. 16, 19.

[863] *Nguyen, Van Nghia*: (penname Mai, Thi Lien), Independence Enhancement in the Operation of Judgement Execution Bodies, Democracy and Law Journal, 2006, p. 38-39.

sanctions would apply to procuracies in supervising the enforcement activities (although the People's Procuracies has conducted the prosecution and supervision, but if the errors or violations were committed in the course of supervising the enforcement of judgments, they were not subject to the relevant legal liability). However, there were no new regulations to supplement the responsibility of the procuracy in the current LECJ. In the coming time, in order to enhance the responsibility of those who have right to supervise civil judgment execution and prevent their abuse of power in supervising CJE, it is necessary to have specific provisions on their responsibilities when they fulfill their power which causes damage to the legitimate rights and interests of the JCs, the JDs, persons with related rights and obligations. Supervision of CJE in certain extent, without proper caring, or does not build the necessary institutions to enhance the responsibility of the competent authorities supervising CJE to limit their errors as well as even the abuse of power in the supervising process, the supervising not only not ensures the correctness of the supervising activity, but also can cause a negative impacts, preventing the smooth and prompt factors of the execution process. Therefore, strengthening the supervising CJE should take measures to strictly handle cases of abuse the right to supervise, causing a bad influence on the process of implementation of civil judgments in order to improve the responsibility of the authority on supervising civil judgment execution.[864] Bearing in mind the requirements of the common European enforcement standards and principles that the protection and promotion the status and role of public prosecutors should be taken into account, however, at the same time, ensuring their efficiency and competence, in order to enable them to perform their professional duties and responsibilities without unjustified interference.[865]

In Germany, the supervisory mechanism for CJE is almost completely different, in which bailiffs are responsible for the execution relating to movable property, some of their activities (e.g., searching a home without the consent of the owner, § 758a ZPO) is subject to a prior authorization of the enforcement court. Many enforcement measures require entering or searching the debtor's home against his will, e.g., seizure, surrender, or eviction. However, the German Constitution guarantees the inviolability of the apartment and requires judicial arrangement for searching. Therefore, the intervention of the judge is required by Art. 13 (2) GG.[866]

[864] *Hoang, The Anh*: Supervision of Civil Judgment Enforcement, PhD. Dissertation, 2015, p. 140, 145.

[865] *The CEPEJ*: Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002, Principle II.2.i.

[866] *Mads, Andenas/Hess, Burkhard/Oberhammer, Paul*: Enforcement Agency Practice in Europe, 2005, p. 171; *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 7.13, p. 85.

It is clear from the above analyses that the autonomy and flexibility of the judgment enforcers in Vietnam may not guaranteed according to international standards. For example, the enforcement process should be sufficiently flexible to allow the enforcement agent a reasonable measure of latitude to decide with the defendant, where there is a consensus between the claimant and the defendant. The enforcement agent's role should be clearly defined by national law (for example their degree of autonomy). They can (for example) have the role of post judicial mediator during the enforcement stage.[867] Or Point 33 of the Guidelines for a better implementation of enforcement of 17 December 2009 insists that

"Enforcement agents, as defined by a country's law, should be responsible for the conduct of enforcement within their competences as defined by national law".

It is also specified that

"Member states should consider giving enforcement agents sole competence for … enforcement of judicial decisions and other enforceable titles or documents (and) implementation of all the enforcement procedures provided for by the law of the state in which they operate".[868]

According to research from the CEPEJ Studies No. 8, supervision of activities means the process whereby an authority makes observations to the enforcement agent on his or her working methods (scheduling problems, lack of courtesy, etc.). Meanwhile, control of activities means control of the lawfulness of the actions carried out by enforcement agents. Between the status of enforcement agents and the supervision and control has a mutual influence on each other. Supervision of the activities of enforcement agents should take into account not only the volume, but also the quality of activities. Supervision of enforcement agents remains quite difficult, impossible even, with respect to those who are independent.[869] Based on the survey results on the agency assigned to supervise and control CJE activities, the Ministry of Justice is the most common supervision and control authority for enforcement agents in member states: 25 of the 42 states with such an authority have opted for this. While 20 states have opted for judges to be responsible for the supervision and control of the activities of enforcement agents. Third place is a professional body with fifteen states have indeed chosen this body as the competent authority. Prosecutors are responsible for the supervision and control of enforcement agents in nine states. Perhaps because they are part of the judicial system. It is interesting to note that prosecutors are never the authority responsible for supervision

[867] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 8.

[868] *The CEPEJ*: Good Practice Guide on Enforcement of Judicial Decisions of 11 December 2015, Practice 10.

[869] *Lhuillier/Lhuillier-Solenik/Carmela Nucera/Passalacqua*: European Commission for the Efficiency of Justice, 2007, p. 47, 48.

and control in states where the enforcement agents are judges. Six states may be chosen other authorities (e.g., the state's Supreme Court in Cyprus, or court managers in Germany) to supervise and control enforcement agents.[870]

Meanwhile, in Vietnam, on the contrary, the executors are subject to the inspection and supervision of many different state agencies, especially the very close supervision of the procuracy. Therefore, in order to ensure the independence and autonomy of executors, Vietnamese enforcement law needs to amend the mechanism of supervising judgment execution activities in accordance with international practices. In the coming time, Vietnam should strengthen the role and responsibilities of the Ministry of Justice or a professional body if it will be established in the supervising and controlling the enforcement activities, and at the same time adjust the duty and role of the judges in the judgment execution stage. The procuracy should only supervise the observance of the law of CJE agencies in special cases.

[870] *Lhuillier/Lhuillier-Solenik/Carmela Nucera/Passalacqua*: European Commission for the Efficiency of Justice, 2007, p. 51, 52.

III. Conclusions for Chapter 3

1. On the basis of the above, although the Vietnamese law stipulates a lot of rights of JDs, the provision protecting of the minimum rights of JDs (e.g., the right to have a minimum living space or a small home to live, the right to guarantee a minimum life) as well as the rights of their family members (e.g., children, wife, husband, and parents) however are limited and shortcoming. Taking advantage of the limitations of law, if the JDs have conditions to enforce the judgments (land, houses, etc.), they disperse their assets, transfer properties to their relatives in order to avoid the duty to enforce the judgment, leading to considerable difficulties for the JC, who have to face with serious challenges to ensure their minimum life if the judgment is not enforced. For example, according to the judgment No. 26/DSST dated 17 March 2015 of the District People's Court X, the person who must enforce the judgment is Mr. A and Mrs. B (his wife). They must pay to Ms. L some money and interest rates of judgment execution delay. The verification results of Mr. A and Mrs. B have assets of 01 plot. However, as soon as the court ordered to summon the litigant, on 6 March 2015, Mr. A and Mrs. B made a notarized contract awarded this plot to their son, Mr. C; until 15 March 2015, the transfer of name and transfer of the right to use the land was completed at the registration office of land use rights, prior to the time of issuance of the judgment exactly 2 days. After that, the JC continued to file a petition requiring the court to cancel the contract for a gift of moveable property between Mr. A and Mrs. B with their son (Mr. C), but still no results. The reason is that, under Art. 459 of the Civil Code 2015:

"1. A gift of immovable property must be recorded in writing and notarized or certified and must be registered if the law on immovable property requires registration of ownership. 2. A contract for a gift of immovable property shall take effect from the time of registration. In the case of immovable property for which no registration of ownership rights is required, the gift contract shall take effect from the time when the property is delivered."

According to this article, the JC (Ms. L) has no right to reclaim the judgment enforcement property because it had been transferred the right to use to a third person.[871] Here, the JD has seriously violated the principle of good faith in implementing the judgment. However, this principle is not regulated and carefully explained in the Civil Code 2015. The LECJ has not yet specified the honest obligations of the JDs, as well as the strict sanctions will be applied if they violate their duty. Clearly that there is a huge gap between the regulations of the Civil Code 2015 and that of the civil judgment enforcement law.

[871] *Nguyen, Van Nghia/Hoang, Thi Thanh Hoa*: Legal Mechanisms to ensure the Enforcement of Civil Judgments and Rulings having taken Legal Effect, Jurisprudence Journal, 06 (217), 06-2018, p. 19.

In this regard, both BGB (e.g., § 242) and ZPO (e.g., §§ 750, 771) have defined apparently and coherently the crucial role of the principle of good faith in the course of the enforcement.[872] In Germany, in the course of enforcement procedures, both JC and JD have to comply with the principle of good faith, or "*Grundsatz von Treu und Glauben"*, stipulated in the § 242 BGB, which provides as follows:

"An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration".[873]

In civil proceedings, the procedural relationship between the parties is subject to the principle of good faith. The principles of improper exercise of rights are also to be observed in the enforcement law, e.g., in case the conditions of execution are dishonest (e.g., in the case of the satisfaction of the execution order required under § 750 ZPO). A typical problem that may arise is the abuse of a lawful judgment.[874] The principle of good faith thus plays essential role in the relationship between the JC, the JD and the third party in preventing the execution of a judgment under the § 771 ZPO.[875] "Good faith" is further one of the most core principles of the enforcement of civil judgments, mentioned several times in the World Conference on civil judgment execution recently held in China:[876]

"Efficient enforcement of effective legal instruments is of great significance to protecting the legitimate rights and interests of JCs, maintaining judicial authority, and promoting the development of a society based on good faith. Enforcement organs should adhere to the philosophy of fair enforcement, appropriate enforcement, and enforcement based on good faith, exercise their enforcement powers prudently, balance the legitimate rights and interests of both creditors and debtors, and effectively prevent abuse of enforcement power".

The standard of "good faith" concerns itself primarily and specifically with the manner, by which an obligation has to be performed. In German legal system, its application had reached such a degree of complexity that a standard commentary on the BGB devoted a whole volume of about 1,400 classified and analyzed pages.[877]

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[872] *Kaiser, Torsten/Kaiser, Horst/Kaiser, Jan*: Die Zwangsvollstreckungsklausur im Assessorexamen, 6. Aufl. 2015, Rn. 45, p. 51; *Bui, Thanh Hang/Do, Giang Nam*, Lives of the Vietnamese Civil Code from the View to compare with the Civil Code of France, Germany, and Netherland.

[873] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 829, Rn. 7, 8, p. 666; *Lippross/Bittmann*: Zwangsvollstreckungsrecht mit einstweiligem Rechtsschutz und Einführung in das Insolvenzrecht, 12. Aufl. 2017, Rn. 9, p. 4; *Saenger, Ingo*: Zivilprozessordnung, 7. Aufl. 2017, Rn. 13, p. 1966; *Stein/Jonas*: Kommentar zur Zivilprozessordnung, Band 8, 23. Aufl. 2017, Rn. 14, p. 14.

[874] *Bamberger/Roth/Hau/Poseck*, BGB, Bürgerliches Gesetzbuch, Kommentar, Band 1, 4. Aufl. 2019, Rn. 10, p. 1163.

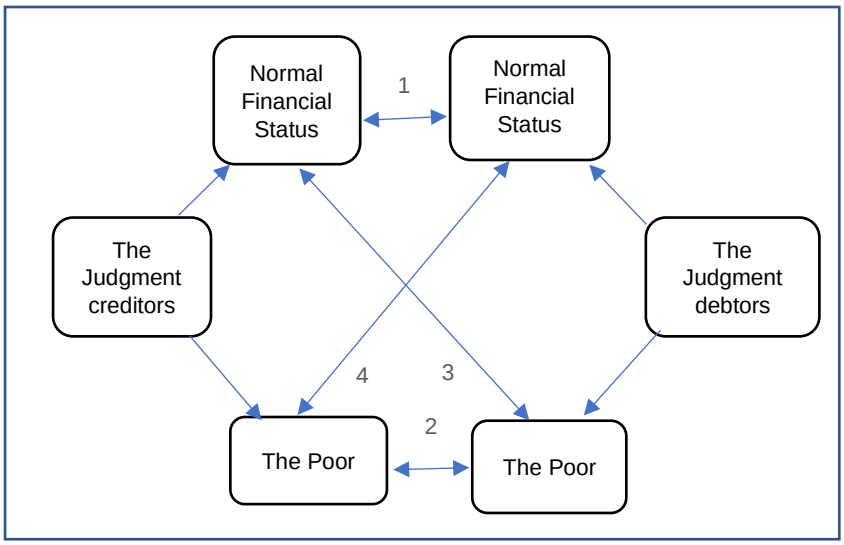
[875] *Kaiser, Torsten/Kaiser, Horst/Kaiser, Jan*: Die Zwangsvollstreckungsklausur im Assessorexamen, 6. Aufl. 2015, Rn. 28-46, p. 37-53.

[876] *The UIHJ*: The World Enforcement Conference of Shanghai, China, 22 January 2019.

[877] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 23.

2. The legal provisions on equal protection of the minimum interests of the involved parties should also consider the economic conditions of both parties. In general, there are common relationships between the JCs and the JDs concerning to their financial situations. These characteristics are illustrated by the hereunder diagram:

Diagram 2: Relationships between the JCs and the JDs concerning to their financial situations



It is clear from the above diagram that enforcement law and other relevant laws should keep a balance between the rights of the creditor and the protection of the fundamental rights of the debtor, especial in the second relationship between the poor JC and the poor JD, the third relationship between the JC who has a normal financial status with the poor JD and the fourth relationship between the poor JC and the JD who has a normal financial status. The poor JC or JD or the involved parties in the difficult circumstances are persons must be rigorously protected by the domestic laws and international laws. The poor must be protected and supported, more than the rich in these situations. Equal protection enjoys everyone; social welfare should be designed as to supports the standard of the poor, but its access should also open to everyone. During the trial period, determining the rights and obligations of the disputing parties will be based on the degree of fault of the parties, the extent of the consequences, and based on the provisions of the law. However, at the judgment execution stage, the enforcement of judgments or decisions depends on many objective factors, e.g., the economic situation of the parties, the protection of basic human rights, so there should be more flexibility.

3. Relating to the immunity from execution, this is an area almost completely new to the field of civil judgment execution in Vietnam. The enforcement law of Vietnam has not yet specifically provided for immunity rights from the enforcement,

meanwhile it is an important area, concerning to the protection of the rights and interests of the foreign state, organizations and individuals in Vietnam as well as the rights and interests of Vietnam abroad. The essential role of immunity is regulated in the Art. 26 of the GCE:

"Cases of immunity must be clearly specified in national law, particularly in respect of the state and public entities, as well as in respect of diplomatic personnel".

Therefore, Vietnamese Government needs to conduct research on immunity in order to supplement the enforcement law as well as other relevant laws in the coming time.[878]

4. With regards to the autonomy and flexibility of the enforcement agent, it can be insisted that the executors and enforcement agencies in Vietnam are confined and operated in a narrow legal framework, in which a lack of necessary regulations on the flexibility of the executors; incomprehensible and inconsistent legal system; its low viability; inadequate and weak implementation mechanism may be considered as the main causes. In addition, the judiciary lacks transparency and consistency, impartiality, and, therefore, may not fully comply with international standards. The lack of independence of the judiciary was also highlighted as an important constraint. These limitations of law have led to anxiety that they must take responsibility (discipline, compensation for damages, criminal punishment) when performing their tasks. Therefore, the Vietnamese laws need to be supplemented the regulations on ensuring flexibility for executors when enforcing the judgments.[879] Strengthen the inspection and supervision as well as take responsibility and the power of judges for the judgment execution process instead of assigning the inspection and supervision of judgment enforcement being conducted by many other agencies and organizations.[880] Particularly, it is necessary to strengthen the role of the court to support the CJE agencies in requesting the JDs to provide information about their assets, in verifying the judgment execution property information.[881] Furthermore, the legal status, role, rights of the executors or their remunerations should be stipulated equality with other judicial officers, e.g., judges, procurators or notaries.[882]

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[878] *Nguyen, Van Nghia*: The Immunity Right for Enforcement Measures for Enforcement of Court Judgments, Legis. No. 18/2018, 9.2018, p. 28-29.

[879] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 165-168.

[880] Report No. 63/BC-BTP, p. 19.

[881] *Nguyen, Bich Thao/Nguyen, Thi Huong Giang*: Improving the Mechanism to Examine Judgment Debtor's Ability to Satisfy Civil Judgments in Vietnam from International Experience, Journal of Science, Vol. 34 No. 1 (2018), p. 1-10.

[882] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 17-21, Art. 25, p. 169.

D. Chapter 4:

International Standards on the Provisional Measures in the Civil Judgment Enforcement: Current Situations in Vietnam

The peaceful settlement of international disputes was one of the three items on the agenda which was mentioned at the Hague Peace Conference of 1899 and 1907. The concepts of provisional measures as a characteristic of the national judiciary, therefore also appeared in this international context at the beginning of the 20 centuries. The Convention for the Establishment of a Central American Court of Justice of 1907 provided for the preservation of *the status quo* while a case was pending, followed by the Bryan Treaties of 1914 and served as a model for a large number of other international courts and tribunals, e.g., the Arbitration Tribunal established by the Convention on Relations between the Three Powers and the Federal Republic of Germany and the Supreme Restitution Court after World War II, were striking illustrations. The primary aim of these provisional measures is to preserve the rights at stake of either party in particular cases which are indispensable means of guaranteeing the effectiveness of the judgment as well as a final decision.[883]

Provisional enforceability and protective measures contribute to ensuring that the JDs voluntarily enforce the judgments and ensuring the feasibility of the judgments and decisions. For instance, in European States, the effectiveness of legal protection of private rights is guaranteed by the constitutions, absent written constitutional provisions and Art. 6 Para. 1 of the EHRC.[884] Provisional enforceability of judgments is of immediate relevance to enforcement proceedings, is functionally integrated into the law of enforcement and is closely interrelated with the rules on judgments and appeal.[885] The enforcement maturity and the effect of the *res judicata* may or may not coincide in terms of time. However, every legal system must determine a point in due time at which judgments ordinarily open the way to enforce. The provisional enforceability is any operation of enforcement, which occurred

[883] *Oellers-Frahm, Karin*: Expanding the Competence to Issue Provisional Measures - Strengthening the International Judicial Function, Vol. 12 No. 05, p. 1280-1281.

[884] *Stürner/Kawano*: Comparative Studies on Enforcement and Provisional Measures, 2011, p. 183, fn. 1 (e.g., Art. 2 (1), Art. 14 (1) GG; Art. 3, 24 Italian Constitution; Art. 24 Spanish Constitution).

[885] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 19, fn. 198.

before that time.[886] Preliminary seizure and/or freezing injunctions (preliminary injunction - *einstweilige Verfügung*) in accordance with the respective rules of substantive law are essential legal tools in order to protect future acquisition of possession or prevent any behavior that could make future performance impossible.[887] The interim protection of rights is apparently one of the general principles of law common to all developed legal systems. As the ICJ put it in the Aegean Sea Continental Shelf case of 1976:

"The essential object of provisional measures is to ensure that the execution of a future judgment on the merits shall not be frustrated by the actions of one party *pendente lite* … According to general principles of law recognized in municipal systems (…) the essential justification for the impatience of a tribunal in granting relief before it has reached a final decision … is that the action of one party *"pendente lite"* causes or jeopardizes a damage to the rights of the other, of such a nature that it would not be possible fully to restore those rights or remedy the infringement thereof, simply by a judgment in its favor".[888]

In the broad sense of "provisional measure", a term "floating charge" or different terms for this concept, including "enterprise mortgage", "enterprise charge", or "pledge of business" may help the creditor to take security not only over an entire business but also the solution to help them become secured creditor in the future.[889]

I. International standards on the right to the provisional or protective measures

Art. 33 of the GCE regulates that

"Every creditor who shows relevant circumstances may obtain authorization from the judge for the application of a provisional or conservatory measure to ensure the protection of his rights. The creditor who is the holder of an enforceable title may implement the provisional or conservatory measure, without the authorization of a judge".

Council Regulation (EC) No. 44/2001 of 22 December 2000, known as "Brussels I", thus indicates two possibilities concerning provisional and protective measures, which are: 1) the beneficiary of a decision given in a Member State, which, according to the Regulation must be recognized, but has not (yet) been declared

[886] *Kerameus, Konstantinos*: Enforcement Proceedings, International Encyclopedia of Comparative Law-Civil Procedure, Vol. XVI-Chapter 10, 2014, p. 19.

[887] *Stürner/Kawano*: Comparative Studies on Enforcement and Provisional Measures, 2011, p. 186-187, fn. 27; *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 15.42, p. 168-169.

[888] *Stürner/Kawano*: Comparative Studies on Enforcement and Provisional Measures, 2011, p. 271, fn. 1.

[889] *Djankov, Simeon/Hart, Oliver/McLiesh, Caralee/Shleifer, Andrei*: Debt Enforcement around the World, 2008, Vol. 116, No. 6, p. 1113.

enforceable, may proceed with the provisional and protective measures provided for by the law of the requested Member State (which is the possibility created by Art. 47.1); and 2) the cross-border circulation of judgments that authorize a protective measure.

Replacement of the Regulation (EU) No. 44/2001, the Brussels Ibis Regulation makes a distinction between provisional and protective measures ordered by a judge competent to rule on the merits or otherwise, including: 1) free circulation is authorized, on condition nonetheless that, if the provisional or protective measure was ordered without the defendant being summonsed to appear, the decision was notified or served on him prior to enforcement; 2) the effect of the measures is restricted to the territory of the member state of the court which ordered the measures.[890]

According to Regulation (EU) No. 655/2014, a Uniform European Procedure will stand above national law will introduce. The Uniform Act also provides protective measures to secure the creditor's rights. For example, under Art. 54:

"Any person whose claim appears in principle to be founded may, by petition, pray the competent court of the residence or place of above of the debtor for an authorization to take preventive measures on all the tangible or intangible personal property of his debtor, without prior summons to pay, where he can show justifiable circumstances which are likely to jeopardize the collection".

In addition, Art. 56 of this Code insists that

"Sequestration may be carried out on all the tangible or intangible personal property belonging to the debtor. It shall render such property inalienable".

Principle 8 of the ALI/Unidroit Principles mentions not only provisional measures to protect the debtor's rights, but also the rights of defense of the debtor. Relating to the intervention of a court, according the ALI, the court must check that the measure is necessary, proportional and fair. But the procedure may be unilateral without adversarial process: the surprise effect is the condition of the effectiveness of the measures, particularly in the event of urgency. The court must guarantee impartiality in respect of the unrepresented debtor. With regard to the rights of defense of the debtor, the ALI requires the possibility of the lifting of the measure must be open to the debtor, who must be able to respond in respect of the appropriateness of the measure.[891] In addition, the debtor must be indemnified if the measure has been enforced when such was not justified.

[890] Art. 2 Para. a.

[891] Principle 8.2.

Concerning to the procedures for the application of provisional measures, the GCE requires a swift procedure must be established so that preservative or provisional measures may be authorized by a judge. The measures must be limited in time. The procedure does not have to be adversarial. The person in whose respect the measure is ordered must be able to dispute it without delay and by using a simplified means of applying to the judge. If the judge considers that the measure did not have merit, the party which applied for and obtained the measure must indemnify the other party in full.[892] It will also be emphasized that provisional, protective or any other urgent measures obtained by simple and rapid procedures should be available in order to provide interim solutions, which although not final, ensure the effective protection of the rights of the parties or of third persons, as well as the efficiency of judicial proceedings.[893]

In accordance with this provision, the Uniform Act contains procedural arrangements that allow a judge to act swiftly. For example,

"The competent authority to rule on all disputes or petitions relating to a forced act of performance or sequestration shall be the president of the court ruling in urgent proceedings, or the judge delegated by him. His decision may be appealed against within a period of fifteen days from its pronouncement. The time limit for appeal and the exercise of the right to appeal shall not bar enforcement unless otherwise specially decided, with reasons therefor, by the president of the competent court" (Art. 49).

The common point between these provisions that require rapid and simple procedures to apply provisional measures in the execution of civil judgments. Persons who have competence to apply provisional measures and protection measures are judges. The person who abuses the application of provisional or protective measures causing the damage shall have to pay compensation to the other party.

II. Enforcement of provisional emergency measures in Vietnam

It may be true that in order to ensure the possibility of execution of a court ruling, effective provisional measures are necessary and could be applied during the time period when court proceedings take place until a final court's ruling enters into force.[894] As stated by Prof. Annette Kur in this regard,

[892] Art. 34.

[893] *The CEPEJ*: Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice of 18 September 2002, Principle I.1.iii.

[894] *Vadim Mantrov*: Available Defenses in Provisional Measures: Between the Enforcement Directive and National Law, 2015, p. 56.

"There is no doubt that interlocutory injunctions are of central importance in intellectual property infringement proceedings".[895]

In Vietnam, depending on each specific judgment execution circumstance, the decision of the court on the application of the provisional emergency measure may lead to the application of the measures to secure judgment enforcement and/or the measures to coerce judgment enforcement.

In essence, provisional emergency measures are instruments by which the parties to a dispute are used to protect their rights and interests temporarily until the case is resolved.[896] The provisional emergency measure is a measure as decided by the court, arbitration to apply in the process of resolving civil cases to deal with the urgent petitions of the involved parties, preserving their current conditions in order to avoid irrecoverable damage and to ensure the lawsuit settlement or judgment execution.[897] "Emergency" means that the court or arbitration shall issue a decision to apply immediately and this decision shall be enforced immediately after the court issues a decision, otherwise it will lose its meaning and effect. In case of executing the decision to apply a temporary emergency measure, the executor must conduct verification immediately. This provision comes from the urgency of the measure. Immediate verification in this case indicates urgency, which means right away after the executor receives the judgment execution decision. "Provisional" means that the decision to apply provisional measures is not a final decision on the resolution of a civil case. If the reason for the application are no longer available, the court may cancel this decision.[898] Provisional emergency measures are provided in the CPC 2015, the 2010 Law on Commercial Arbitration, the LECJ and other relevant laws.

The competent persons to petition the application of provisional emergency measures, types of provisional emergency measures, the grounds for granting of provisional emergency measures, the time required for applying provisional emergency measures, and procedures for applying provisional emergency measures may be beyond the scope of this study. Therefore, below parts will focus on the enforcement of decisions on application of provisional emergency measures.

Art. 142 Para. 1 of the CPC 2015 regulates that the decisions on application, change or cancellation of provisional emergency measures shall be executed in

[895] *Kur, A*: The Enforcement Directive-Rough Start, 2004, p. 825.

[896] *Nguyen, Thi Thu Thuy/Le, Hai An*, Conditions for the Application Provisional Emergency Measures in Civil Proceedings, 8 (352)/2017, p. 32-38.

[897] The CPC 2015, Art. 112; The 2010 Law on Commercial Arbitration, Art. 49; *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 130, p. 604: *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments in Vietnam, 2018, p. 426.

[898] *Pham, Thi Hong Dao*: Discusses some Provisional Emergency Measures prescribed by the 2015 Civil Procedure Code.

accordance with the law on civil judgment execution. Similarly, Art. 50 Para. 5 of the Law on Commercial Arbitration also states that the enforcement of the arbitration council's decision to apply interim urgent measures comply with the law on ECJs.

1. Procedures before the execution of decisions on the application of provisional emergency measures

a) Sending of judgments and rulings

Relating to the sending of judgments and rulings, Art. 28 Para. 3 of the LECJ stipulates:

"Courts or commercial arbitrations that make decisions on application of provisional urgent measures shall, right after making such decisions, promptly deliver them to CJE agencies".

Rulings on application of provisional urgent measures of first-instance courts shall be enforced immediately though they may be appealed or protested.[899]

b) Verification of judgment execution condition

About the verification of judgment execution condition, normally, within 10 working days after the deadline for the voluntary execution of a judgment, if a JD fails to voluntarily execute the judgment, an enforcer shall conduct the verification of judgment execution conditions of the debtor. However, in case of implementation of a decision on the application of provisional urgent measures, the verification must be conducted without delay.[900] This is due to the urgency of the measure. "Immediate verification" in this case expresses urgency, which is to be understood as soon as possible after the enforcement officer receives the judgment. However, in practice, what is "instant or immediate verification" still have different views, the timing of verification in this case is within a day or maybe later lasting until the next day, which is still a question without answers.[901]

c) Issuance of decisions on the application of provisional emergency measures

Regarding to issuance of decisions on the application of provisional emergency measures, Art. 36 Para. 2 of the LECJ provides that the heads of CJE agencies are competent to proactively issue judgment enforcement decisions must issue judgment enforcement decisions without delay and assign enforcers to organize the enforcement of these decisions.

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[899] The LECJ, Art. 2 Para. 2 Sub-para. b.

[900] The LECJ, Art. 44 Para. 1.

[901] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 44, p. 252-253.

d) Jurisdiction to enforce decisions on the application of provisional emergency measures

Concerning the jurisdiction to enforce decisions on the application of provisional urgent measures of courts, the LECJ does not clearly stipulate which CJE agencies shall have the competence to execute decisions on the application of provisional urgent measures of courts at all levels. However, pursuant to the provisions on jurisdiction in Art. 35 of the LECJ, the district-level civil judgment-executing bodies shall have the competence to execute the first-instance judgments and/or decisions of the district-level people's courts where the district-level civil judgment-executing bodies based. If these first-instance judgments or decisions are adjudicated or re-examined according to the cassation or reopening procedures, the district-level civil judgment-executing bodies where the district-level people's courts have already conducted the first-instance trial still have the competences to enforce the decisions. Therefore, the district-level civil judgment execution agencies are competent to execute the decisions on application of provisional urgent measures of the district-level people's courts in the same locality. Similarly, the provincial-level civil judgment execution agencies are competent to enforce the decisions on application of provisional urgent measures of the provincial-level people's courts in the same locality.[902]

Authority to enforce decisions to apply provisional emergency measures of commercial arbitration is different. According to the Art. 35 Para. 2 Sub-para. dd of the LECJ and Art. 8 Para. 2 of the law on commercial arbitration, only the provincial-level civil judgment execution agencies where the provisional emergency measures are applied to implement the decisions on application of provisional emergency measures of the arbitration council.[903]

2. Procedures for enforcing rulings on application of provisional emergency measures

Procedures for enforcing rulings on application of provisional emergency measures are provided in the Art. 130 of the LECJ. Under the Art. 130 Para. 1 of the LECJ, within 24 hrs. after receiving the judgment execution decision, the executor must immediately apply without delay the security measures and coercive measures to secure judgment enforcement. Depending on the type of provisional emergency measures taken by the court, the executor will apply appropriate security measures or coercive measures among the security and coercive measures stipulated by the LECJ.

[902] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 36, p. 215-216.

[903] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 36, p. 216.

Measures to secure judgment enforcement include blockading accounts; seizing assets and papers; suspending registration, transfer or change in the current state of assets which are stipulated from Art. 66 to Art. 69 of the LECJ. Similar restrictions as the starting time of application of coercive measures, the enforcement law of Vietnam has not yet provided for the starting time of issuing a decision to apply security measures to enforce judgment when the JCs request.[904] This leads to the application of security measures depending on the subjective will of executors and inconsistency between executors on the nationwide. In practice, there are cases when the applicant submits a petition to the judgment enforcement agency to apply security measures, the executor may immediately decide to apply security measures by making a decision but may also take a few days or even longer. This delay may affect the judgment execution results, affecting the legitimate rights and interests of the judgment enforced person. Therefore, the significance and provisional emergency nature applied by the court will not be effective and efficient in practice.[905]

Six measures to coerce judgment enforcement are provided from Art. 70 to Art. 121 of the LECJ. At the same time, according to the Art. 70 Para. 3 of this law, when organizing the implementation of decisions on application of provisional urgent measures, the executor shall not have to issue decisions on coercive judgment execution. Thus, this is a fundamental difference in the procedure for implementing decisions on the application of provisional emergency measures in comparison with the implementation of other normal judgments and decisions. Depending on the various provisional emergency measures, the procedure for implementing each provisional emergency measure is also different, below are two examples:

(1) Procedures for enforcing rulings on application of provisional emergency measures banning involved parties from performing or forcing them to perform certain acts; consigning minors to individuals or organizations for care, fostering, nurturing and educating; and suspending enforcement of rulings on dismissal of employees (Art. 130 Para. 1 Sub-para. a of the LECJ). Executors shall apply corresponding coercive measures according to the LECJ to implement decisions on the application of provisional emergency measures, specifically as follows: the coercive performance of the obligation to do certain jobs (Art. 118), coercive performance of the obligation not to do certain jobs (Art. 119), coercive consignment of minors to assigned fosterers under judgments or rulings (Art. 120), and coercive reemployment of laborers (Art. 121).

[904] See A. Chapter 1. VI. 2. b).

[905] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 66, p. 376.

When implementing the provisional emergency decisions in the above case, the law stipulates that, within 24 hrs. from the date receipting the judgment execution decision, the executor shall immediately apply the coercive measures. However, this does not mean that the enforcer must enforce and terminate the enforcement of the judgment within 24 hrs., depending on the coercive measures to carry out the appropriate operations. For example, if a coercive force is to be mobilized by the police and other relevant individuals or organizations, the enforcement enforcers must coordinate with the concerned agencies to adequately prepare the coercive plan as prescribed. Therefore, the "immediately apply coercive measures" in these cases should be understood as the executor immediately carry out the procedures as prescribed to organize the implementation the decision to apply provisional emergency measures, e.g., notifying judgment enforcement, verifying judgment enforcement conditions, or persuading involved parties to voluntarily execute judgments, and etc.[906]

(2) Procedures for enforcing rulings on application of provisional urgent measures compelling early performance of part of the alimony obligation or the obligation to pay compensations for loss of life or damage to health; and compelling advance payment by employers of salaries, remuneration, labor accident or occupational disease compensations and allowances to employees (Art. 130 Para. 1 Sub-para. b of the LECJ). When implementation of the provisional emergency measures in these cases, the executor shall choose to apply one or several coercive measures in the following enforcement measures: deduction of money on accounts; recovery and handling of money and valuable papers of JDs (Art. 71 Para. 1); subtraction of incomes of JDs (Art. 71 Para. 2); distraint and handling of assets of JDs, including also those held by third parties (Art. 71 Para. 3); and forcible transfer of objects, property rights and papers (Art. 71 Para. 5).

As a rule, before implementing coercive measures, the executor must carry out the verification of information assets. Grounds for coercive judgment enforcement include judgments or rulings; judgment enforcement decisions; and coercive judgment enforcement decisions, unless the courts rule on the application of provisional urgent measures (Art. 70). This means that in case of application of provisional emergency measures, executor does not need to issue a coercive judgment enforcement decision to enforce a judgment or decision. However, in practice if executor does not issue coercive judgment enforcement decision, some coercive judgment enforcement measures, e.g., subtraction of incomes of JDs (Art. 71 Para. 2); deduction of money on accounts (Art. 71 Para. 1 S. 1); or distraint and handling of assets of JDs (Art. 71 Para. 3 S. 1) will not be implemented effectively.

[906] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 130, p. 607.

These coercive measures are often related to a third party who has competence to manage the money or property of the JD, e.g., banking or social insurance. In fact, if executor does not issue coercive judgment enforcement decisions in case of application of provisional emergency measures, these concerned parties have no legal basis to implement the transfer of money or property of the debtor to the executor or creditor. Therefore, before implementing the above coercive measures, executor also needs to issue coercive judgment enforcement decisions as a legal basis to work with competent agencies and organizations, although the law does not prescribe.[907]

Vietnamese law on implementation of provisional emergency measures still has major drawbacks (e.g., slow and complicated procedures) in comparison to the requirement of the international laws. Therefore, the provisions of the Federal Republic of Germany on the provisional remedies as disclosed below are valuable lessons that contribute to the improvement of the Vietnamese law.

III. Some experiences of the Federal Republic of Germany on the attachment remedies and temporary injunctions

In Germany, the attachment of assets *(or Arrest)* is the proper remedy to secure monetary claims or claims which may become a monetary claim.[908] This provisional urgent procedure is provided by the ZPO with the aim of safeguarding the effectiveness of legal protection in the main proceedings and securing the effectiveness of the enforcement process to prevent lasting disadvantages for the creditor.[909] There are some outstanding advantages in the temporary enforcement procedure in Germany. The proceedings are fast, orders for preliminary relief can be issued *ex parte*, i.e. without hearing the defendant first, and the standard of proof is lowered in comparison to the main proceedings.[910] For example, proceedings for provisional remedies do not take more than two days, sometimes even only a few hours, from filing the application to obtaining the court order. According to § 920 (2) ZPO, the claims and the grounds for a writ of seizure need not to be demonstrated in a way that the court is fully convinced; it is enough when the facts are very likely. This means that the plaintiff only shows *prima facie evidence (Glaubhaftmachung)*. In principle, the burden of proof in the urgent procedure corresponds to the burden of proof in the main proceedings. § 920 (2) ZPO does not contain any clue that it should also result in a reversal of the burden of proof.[911]

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[907] *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, Art. 130, p. 607-608.

[908] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 50.1, p. 603.

[909] *Johann Braun*: Lehrbuch des Zivilprozeßrechts, 2014, p. 1149.

[910] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 111-112.

[911] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 920 ZPO, Rn. 25, p. 1629.

1. Jurisdiction

Under § 919 ZPO, both the court before which the main action is being pursued as well as the local court *(Amtsgericht)* of the district where the object to be seized or the person whose personal liberty is to be limited are situated or resident shall be responsible for issuing the writ of seizure. According this article, the domestic plaintiffs may choose between different competent courts. However, the foreign plaintiffs may bring attachment proceedings to the local courts if the defendant has assets located in Germany.[912] At the request of the plaintiff, only German courts listed in § 919 ZPO have exclusive jurisdiction in rendering an attachment order (*Arrestbeschluss*) or judgment on the validity of a civil arrest (*Arresturteil).* § 930 (1) S. 3 provides that the court competent to decide on the attachment is also competent for the execution.[913] The enforcement court in arrest (not in the case of the temporary injunctions) is always the competent court for arrest proceedings.[914] The main court of appeal pursuant to § 943 (1) ZPO is basically the first-instance court, even if the first instance has already been completed by final judgment (*Endurteil*). Only when the lodging of the main appeal takes place in the appeal, the appeal court becomes the main court. In certain cases, the main proceedings can be pending in both the first and in the second instance court.[915] In addition to the main court, the district court is also responsible, in whose district the object to be arrested is located. Relevant time is one of the applications. This jurisdiction regulation serves the effectiveness of interim legal protection of the process acceleration.[916] If a party expects a provisional measure, he or she may submit a protective writ to all courts where the opponent might apply for an attachment order. The form and contents of the protective writ are comparable to a statement of defense. According to German Law, there is a central electronic register for protective writs, which is available at *www.schutzschriftenregister.de* where such writs can be registered and assessed by the courts before issuing an *ex parte* attachment order. Since 01 January 2016, all civil and commercial courts in all States of Germany will be obliged to check the register for writs.[917]

2. Motions

§ 920 ZPO indicates that the request is to set out the designation of the claim, specifying the amount of money or the monetary value. The grounds for a writ of seizure is to the satisfaction of the court. Normally, relating to the garnishment of the

[912] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 112.
[913] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 51.7, p. 611.
[914] *Saenger, Ingo*: Zivilprozessordnung, 7. Aufl. 2017, Rn. 4, p. 1962.
[915] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 919 ZPO, Rn. 9, 10, p. 1617.
[916] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 919 ZPO, Rn. 12, p. 1618.
[917] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 114.

defendant's monetary claims and proprietary interests, the application for attachment is usually combined with the application for a garnishment order.[918] The arrest process requires a search. Specification of the claim to be secured together with its amount of money or monetary value and the name of the debtor.[919] According to the claim for an arrest, the money receivable or equivalent requirement within the meaning of § 916, must be substantiated by specifying the amount of money or, if it is a claim that can only be converted into a monetary claim, the value of the money. The denomination of the monetary value is necessary because otherwise the arrest's fundamental risks for the creditor cannot be assessed. Depending on the amount of money or monetary value, the scope of the permissible arrest pensions (§§ 928, 803 (1) S. 2), the arrest liens (§ 930 (1) S. 2) or the arrest mortgage (§ 932 (1)) as well as the total amount of the remedy are also determined. The application also includes the name of the creditor (applicant) and the debtor (defendant), which must be indicated in the title of a judgment with credit-worthy addresses. The claim must not only be described, but also justified by the statement of the facts. This arises in connection with § 294, because the level of proof refers to the legitimate facts. In this respect, the claimant has not to indicate more as by § 253 (2) No. 2 for an ordinary legal action. Otherwise, not even a final examination by the court could be done. The lack of this information cannot be replaced by the performance of a security.[920]

3. Attachment Claim

Seizure under § 916 ZPO is a remedy serving to provide for compulsory measures against movable (§§ 803 - 863 ZPO) or immovable property (§§ 864 - 871 ZPO) either for a monetary claim or a claim that can give way to a claim for money in the future. Attachment aims to secure the plaintiff's claim against the defendant *(Arrestanspruch)*. Contrary to the extremely narrow heading, § 916 ZPO does not only regulate which claims are to be taken as a basis for arrest, rather also the only permissible target and thus the purpose of the arrest is determined. This serves exclusively the "securing of the compulsory enforcement because of a monetary claim". This purpose is in accordance with §§ 930 to 933 ZPO.[921] All requirements, including claims that their profits or benefits increase over a period in the future, conditional claims or claims with a fixed future maturity date may all be safeguarded by an attachment.[922]

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[918] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 112-113.

[919] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 51.12, p. 612.

[920] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 920 ZPO, Rn. 5, p. 1621-1622.

[921] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 916 ZPO, Rn. 1-3, p. 1596-1597.

[922] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 113.

4. Grounds for Attachment

The concept of "attachment" may be construed as follows: "the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment"; or "the arrest of a person who either is in contempt of court or is to be held as security for the payment of a judgment", etc.[923] The applicant has a claim against the defendant, however, the ground for arrest is necessary for legal protection in the form of a temporary injunction. The arrest ground is differently regulated in the §§ 917, 918 ZPO relating to the attachment and the personal arrest, which need to presuppose equally from the danger of an enforceable deprivation of rights.[924] The grounds for an attachment depend on the attachment of assets and a personal arrest.

a) Grounds for an attachment of assets

The grounds for a writ of seizure to be issued in the case of seizure against the assets of a potential debtor, which are precisely regulated in the § 917 ZPO:

"1. Seizure is an available remedy wherever there is a concern that without a writ of prejudgment seizure being issued, the enforcement of the judgment would be frustrated or be significantly more difficult".

It is clear from this article that the property of the debtor, whether the entire or part property owned by the debtors, or valuable objects can be attached by a writ of attachment in order to preliminarily protect the plaintiff's prospects of executing a judgment rendered in the future. There are some reasons for an attachment order include the reasonable suspicion that the defendant attempts by dishonest means, e.g., putting his assets out of the plaintiff's reach, making or planning dispositions concerning his assets, fraud or embezzlement of funds.[925] The obvious danger to enforcement may typically arise when the property of the debtor is deliberately reduced, e.g., the debtor sells a valuable oriental rug to his/her friends at a nominal price and it is also feared that the real proceeds of sale will be excluded from enforcement proceedings. It should be stressed that a reduction of the debtor's assets without any further indication of fraudulent action is insufficient (e.g., the sale of goods where the proceeds remain with the debtor).[926] Defaulters or guilty actions of the debtor are primarily considered. This can also be a lawful behavior. Thwarting or malicious acts are generally accepted in the event of a loss of property, of unusual sale or encumbrance of assets, without corresponding countervalues being owed, if

[923] *Garner, Bryan A.*: Black's Law Dictionary, 8th ed., 2004, p. 136.

[924] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 917 ZPO, Rn. 1, p. 1602.

[925] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 113.

[926] *Lüke, Gerhard/Hau, Wolfgang*: Zwangsvollstreckungsrecht, 3. Aufl. 2008, p. 281-293.

the property fails to meet a financial obligation, if the property is colluded, or if the debtor changes his/her residences frequently.[927]

§ 917 (2) ZPO regulates:

"It is to be deemed sufficient grounds for a writ of seizure to be issued if the judgment would have to be enforced abroad and reciprocity is not guaranteed. No grounds for a writ of seizure need be given if the seizure is being implemented solely by way of securing the compulsory enforcement against a ship".

There is an irrebuttable legal presumption that enforcement proceedings are threatened if the creditor has to enforce the judgment abroad. However, enforcement abroad is not necessary if a debt can be seized in Germany when the debtor has a foreign domicile. § 917 (2) ZPO is not applicable in cases in which the judgment has to be enforced in one of the member states of EU.[928] The relocation of residences abroad is inadequate if there is a sufficient domestic wealth that the creditor can access; moreover, even in the case of a foreign execution, an arrest basis is assumed to be irrefutable only under the conditions of § 917 (2) S. 1 ZPO.[929] Thereafter, an arrest reason is irrefutably presumed because of the abstract difficulties associated with a foreign execution if the judgment had to be enforced abroad and the mutuality is not guaranteed. A concrete threat of enforcement is then credible and need not to be explained. The necessity of a foreign execution is given when there is a lack of adequate domestic assets of the debtor.[930]

b) Personal arrest

Personal arrest related to the CJE is carried out by the imprisonment of the debtor or a restriction of his personal freedom stipulated in §§ 918, 933 ZPO. For example, arresting a debtor in person is an available remedy only if this is required in order to ensure compulsory enforcement against the property of the debtor when such compulsory enforcement without arresting the debtor would be at risk (§ 918 ZPO). Personal arrest is only permissible where an arrest into the debtor's property would not be sufficient for the creditor's security, the personal arrest is only subordinate to the attachment of assets and only the mildest form of personal arrest is admissible.[931] The personal security arrest is permissible only in exceptional circumstances as *ultima ratio*.[932] The word "in the assets", § 916 ZPO makes clear once again that

[927] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 917 ZPO, Rn. 6, p. 1604.

[928] *Kindl/Meller-Hannich/Wolf*: Gesamtes Recht der Zwangsvollstreckung, 3. Aufl. 2016, § 917 ZPO, Rn. 13, p. 1191.

[929] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 917 ZPO, Rn. 6, p. 1604.

[930] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 917 ZPO, Rn. 9, p. 1606.

[931] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 918 ZPO, Rn. 3, p. 1612; *Baur/Stürner/Bruns*: Rn. 51.4; *Brox/Walker*: Rn. 1503; *Gaul/Schilken/Becker-Eberhard*: § 75. Der Arrest, Rn. 10.

[932] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 51.1, p. 606.

personal arrest serves only to secure enforcement because of a monetary claim. In addition, the principle of proportionality prohibits interference with the fundamental right of the debtor under Art. 2 (2) S. 2 GG, especially if the creditor only pursues trivial claims. When assessing the proportionality - in contrast to a writ of attachment - it is always necessary to evaluate the interests in each individual case. The application's interest in effective legal protection must be balanced with the opponent's freedom of defense.[933] The greatest satisfaction of the creditor with the lowest possible impairment to the debtor is a key principle of a civil judgment, in which satisfaction of the creditor's rights rooted in private law and proportionality principle rooted in public law.[934]

5. The decision regarding an attachment order or an arrest order

Depending on the circumstances, in which there has been an oral hearing or not, an attachment or an arrest order is rendered by the court. Whereby, the court will render an attachment judgment (*Arresturteil*) after notifying the defendant of the application to set a time for a written response and schedule an oral hearing. Otherwise, if the courts do not conduct the oral hearings, they will render an attachment order (*Arrestbeschluss*) *ex parte*.[935]

Under § 922 (1) S. 1 ZPO, the decision regarding the request shall be delivered by a final judgment if the matter is dealt with in a hearing for oral argument, and in all other cases by a court order. Relating to the procedure with oral proceedings, the judicial procedure (§ 922 (1) S. 1 ZPO) is governed by the general provisions of § 128 ZPO. However, due to the need for urgent assistance, special circumstances apply to the termination procedure compared to the main proceedings. The period for filling a defense under § 274 (3) about two weeks is incompatible with the express nature of the procedure and therefore not applicable.[936] With regard to the procedure without oral proceedings (§ 922 (1) S. 1 ZPO), the decision is taken solely based on the written presentation by the applicant or both parties, if the defendant is consulted in writing. The latter case is a two-sided procedure, in which the rules on acknowledgment (§ 307 ZPO), admission before the court (§ 288 ZPO), and non - contestation (§ 138 (3), (4) ZPO) will be applied. This can exempt the creditor from proving the facts pursuant to § 920 (2) ZPO.[937] Contrary to the words of §§ 128 (4), 922 (1) S. 1 ZPO, the waiver of oral proceedings is not at the discretion of the court.

[933] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1503, p. 734.

[934] *Perez-Ragone, Álvaro*: International Association of Procedural Law, Seoul Conference, 2014, p. 640; *Stamm, Jürgen*: Die Prinzipien und Grundstrukturen des Zwangsvollstreckungsrechts, 2007, p. 98.

[935] *Rützel/Wegen/Wilske*: Commercial Dispute Resolution in Germany, 2016, p. 114.

[936] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 922 ZPO, Rn. 2, p. 1639.

[937] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 920 ZPO, Rn. 23.

This derives from Art. 103 (1) GG.[938] According to this constitutional principle, the opponent of the opposing party is to be granted an opportunity to be heard before the decision is issued. This fundamental right also applies in the accelerated proceedings.[939] In an *ex parte* - procedure, the debtor is guaranteed an opportunity to be heard after the decision has been made.

Through decision, the arrest request is decided if an oral hearing has not taken place. In any case, it is to be justified if the application is rejected.[940] When ordering the arrest, the court only adjudicates the decision of the office to the applicant. Contrary to the rule of § 317 ZPO, which applies to judgments, the delivery of the attachment order to the opponent party is organized by the application himself (§ 922 (2) ZPO). The applicant should be able to decide until the last minute whether he makes use of the arrest warrant or disregards it, for example because the defendant has changed his behavior. By final judgment, the court decides after oral proceedings, then § 310 ZPO will be applied. The judgment has also been delivered to the opposing parties, as he already knows by the hearing of the arrest procedure.[941]

6. Execution of attachment orders and arrest orders

Execution of an order for attachment of assets is regulated in §§ 928 et seq. ZPO. There are some special rules ensuring the rapid enforcement of the attachment order, including:[942]

(1) The attachment order is itself an immediately enforceable document, which does not need to be declared to be provisionally enforceable (§ 929 (1) ZPO). Arrest orders are immediately enforceable.[943] Therefore, even if they are ordered by judgment or confirmed in opposition proceedings, they cannot or should not be declared provisionally enforceable. Normally, a certificate of enforceability is not required for enforcement. The attachment order only requires a certificate of enforceability in exceptional cases when the enforcement is affected on behalf of a different creditor or against a different debtor than the one who is named in the order (§ 929 (1) ZPO).[944]

(2) Enforcement is permitted even before the attachment order has been served on the debtor (§ 929 (3) S. 1 ZPO). The service of the attachment order must be affected within one week after the enforcement and within one month following the issue of

[938] Art. 103 (1) GG: In the courts every person shall be entitled to be heard in accordance with law.

[939] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 922 ZPO, Rn. 2, 3 p. 1639.

[940] *Walker*: Rn. 366; *Schuschke/Walker/Walker*: § 922 ZPO, Rn. 27.

[941] *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1516, p. 741.

[942] *Kaye, Peter*: Methods of Execution of Orders and Judgments in Europe, 1996, p. 126.

[943] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 52.2, p. 624.

[944] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 52.2, p. 624; *Brox/Walker*: Zwangsvollstreckungsrecht, 11. Aufl. 2018, Rn. 1535, p. 750.

the order or its service on the applicant. This is an advantage because the ordinary enforcement may only be commenced when the enforcement order has been previously served or simultaneously served (§ 750 (1) ZPO). The effectiveness of the enforcement measures taken prior to the delivery of the arrest warrant is conditional on the subsequent delivery. If the delivery is not made within the time limit according to § 929, any acts of execution become ineffective. The debtor can apply for appeal according to § 766 with the aim of suspending any further execution of the arrest. In addition to the arrest warrant, the further necessary documents must be delivered within the deadline of § 929 (3), particularly the proof of the performance of the creditor's security.[945]

(3) § 929 (2) ZPO regulates that enforcement must be completed within one month. It means that after the expiry of this time limit an enforcement of the attachment order is not permitted. In order to prevent that the arrest execution is carried out under conditions which are significantly different from those given at the time of the arrest order, it is prescribed that the execution must be completed within a specified period; it is only allowed within one month after the arrest order has been issued. This limitation of the creditor's powers from the urgent security that he won is not only constitutionally acceptable, it even appears constitutionally required by the rule of law.[946]

The deadline is a statutory term, which is either non-renewable or expired. Two questions must be answered here: when does the execution period expire? When is the arrest order completed in due time?[947]

The month period begins with the delivery of the arrest at the oral hearing or - if no hearing has taken place - with the delivery (or formless delivery) to the creditor.[948] The time-limit is calculated according to the general rules (§§ 187 (1), § 188 (2) and (3) BGB).[949] The deadline is to be observed by the enforcement authorities. It is not allowed to start new execution measures after the deadline, even if the debtor does not contradict. Even a consensual extension of the deadline by the parties is ineffective and irrelevant to the enforcement authorities.[950]

Besides the attachment remedies as analyzed above, the German law of civil procedure offers temporary injunctions (*einstweilige Verfügungen* - §§ 935 et seq.

[945] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 52.7, p. 626-627.

[946] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, 6. Aufl. 2016, § 929 ZPO, Rn. 6, p. 1726-1727.

[947] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 52.3, p. 624.

[948] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 52.4, p. 625.

[949] *Bamberger/Roth/Hau/Poseck*: BGB, Bürgerliches Gesetzbuch, Kommentar, Band 1, 4. Aufl. 2019, §§ 187, 188, p. 990-993.

[950] *Schuschke/Walker*: Vollstreckung und Vorläufiger Rechtsschutz, Kommentar, 6. Aufl. 2016, § 929 ZPO, Rn. 16, p. 1731.

ZPO). The purpose of injunctive relief is for provisional regulation of legal relations or a safeguarding of non-monetary claims. There are three kinds of temporary injunctions, including preventive injunctions (*Sicherungsverfügung*), regulatory injunctions (*Regelungsverfügung*) and performance injunctions (*Befriedigungsverfügung or Leistungsverfügung*). The preventive injunctions aim at safeguarding non-monetary claims (e.g., claims for the recovery of possession of personal property) while provisional settlement the disputes regarding legal relationships (e.g., temporary regulations for the use of property by co-owners or regulations in landlord-tenant disputes) is the goal of the second injunctions. The target of third injunctions is not only safeguarding the enforcement of a claim but resulting in an affirmative obligation forcing the debtor to render performance. Within the creditor's petition, the court has discretion to decide what kind of temporary injunctions.[951]

Vietnamese CJE laws are very deficient, especially conflicted and overlapped with specialized laws. Moreover, judgment execution measures relating to the common property (co-owner), or objects of judgment execution are non-monetary claims remain problematic. Meanwhile, Vietnamese law has not legal provisions on temporary injunctions like those of the Federal Republic of Germany. Therefore, the provisions on temporary injunctions of the Federal Republic of Germany are valuable experiences for improving the enforcement law of Vietnam.

[951] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 500-501.

IV. Conclusions for Chapter 4

Meanwhile the temporary emergency measures play crucial roles in ensuring effective judgment execution, the provisions of Vietnamese law have not taken the advantage of the positive effects of these measures. From the above analysis has indicated that the measures called "provisional emergency measures", but in the process of applying in practice, it has lost some real nature and the effect of the provisional emergency measures because of various objective and subjective reasons.

In addition, many economic cases and corruption are of great enforcement value, but the efficiency of enforcement is not high, partly because provisional emergency measures have not been effectively applied in practice. Many assets in these cases have been dispersed or transferred to another person before being implemented. In cases of serious corruption, there is a great value to enforce in the judgments, but most of the assets have been hidden, rationalized or intentionally dispersed, so valuable security assets are very small or even no property for judgment execution; in many cases, assets were dispersed in many different localities, the legal regulations are not clear, making the enforcement faced enormous difficulties.[952]

Therefore, in addition to improving the overall CJE law in general, Vietnam should focus on improving the efficiency of the provisional emergency measures. The role and responsibilities of judges and executors in the application of provisional measures should be strengthened.

Furthermore, dating back on 16 December 2015, as in the legal systems of the socialist country, the sole source of law recognized in Vietnam was legislation which is the constitution, codes, laws and secondary laws (e.g., decrees, circulars), therefore the precedents, on the other hand, were not recognized.[953] Similarly, dating back on 01 January 2017, the concept of "justice" was not stipulated in the Vietnam civil proceedings code.[954] The application of law in Vietnam was critically evaluated to be inconsistent, nonuniform and ineffective , as a result. A lack of adequate legal interpretation, the legal uncertainty and the deficiency of the legislation constitute shortcomings of the Vietnamese legal system.[955] Under the Art. 45 Para. 3 and the Art. 517 of the CPC 2015, since 01 July 2016 the "precedents" and the "justice" shall be applied to settle civil cases when the application of law provisions applicable to the same matters is not available. Precedents shall be studied and applied in the resolution of civil cases after being selected by the Council of Judges of the Supreme

[952] *Thu Hang*: Execution of large-scale and economic judgment still faces many difficulties, 2019.

[953] 26 December 2015 is the date on which the Resolution No. 03/2015/NQ-HDTP comes into force.

[954] The date on which part of the CPC 2015 comes into force. The "justice" concept was stipulated in the Art. 45 of the CPC 2015 meanwhile this article comes into force from 01 January 2017.

[955] *Do, Thi Mai Hanh*: Transplanting common Law Precedents: An Appropriate Solution for Defects of Legislation in Vietnam, Vol. 25, p. 89.

People's Court and announced by the Chief Justice of the Supreme People's Court.[956] Art. 1 of the Resolution No. 04/2019/NQ-HDTP defined the precedents and legal status of precedents as follows: Precedents are arguments and rulings written on effective judgments or decisions of the courts that are selected by the Council of Justices of the Supreme People's Court and published by the Chief Justice of the Supreme People's Court in order for other courts to study and adopt them when deciding later cases.

The justice shall be determined based on the reasons admitted by everyone, conformable with the principle of being humanitarian, unbiased and equal in rights and obligations of involved parties in such civil cases.

Thus, the concept of "precedent" and "justice" have become one of the valuable sources of the Vietnamese law and are used in trial practice in Vietnam. However, typical cases of judgment execution have not been considered as a source to implement similar cases. Therefore, the cases of European judgment enforcement are also a way to study applicable in Vietnam in the coming time.[957] If case-law enforcement or case-law collection and the justice will be recognized and regulated in the enforcement law and implemented in Vietnam, the inadequacy of legal interpretation as well as the issue of constitutional violation or a lack of legal provisions in the field of enforcement would also be negated or limited.

Provisional emergency measures, or application of precedents or justice in the enforcement are considered positive supportive measures, ensuring effective judgment execution. Therefore, these solutions need to be further studied, especially the international experience, the experience the Federal Republic of Germany in order to improve the civil judgment enforcement law of Vietnam in the coming time.

[956] The Resolution No. 03/2015/NQ-HDTP was replaced by the Resolution No. 04/2019/NQ-HDTP.

[957] https://www.echr.coe.int/Pages/home.aspx?p=home

General Conclusions

From international standards and experiences of the Federal Republic of Germany on the ECJs, together with the contents analyzed in the thesis, this Part will summarize the basic causes and propose possible solutions to improve the efficiency of the ECJs in Vietnam.

1. Principles often have stability and long-term application. In order to establish the effective and functional civil judgment execution system, the necessary principles, e.g., the principle of judgment execution organization model, the principle of judgment execution procedures, etc., should be fully defined by the legal system. However, the current enforcement law of Vietnam neither specifies nor incorporates such general principles and the specific principles in the field of CJE. Due to the lack of necessary principles, the enforcement law of Vietnam is subject to constant change, making it difficult for the enforcement work in practice. For example, since it was not impossible to determine who is in charge of the enforcement procedures, as well as do not insist exactly the nature of the judgment enforcement, therefore, the provisions on the responsibility to verify the judgment execution conditions of the JD were also frequently changed whenever amending the enforcement law. Here are some striking illustrations:

(1) Responsibility for verifying the properties and judgment execution conditions of the JDs. Since 2004, the ordinance on execution of civil judgments regulated that ***executor*** *has responsibility for verifying the properties and judgment execution conditions of the JDs*; requesting the concerned agencies, organizations and individuals to supply documents for verification of the addresses and properties of the JDs or coordinate with the concerned agencies in handling material evidences, properties and other matters related to the judgment execution.[958] Four years later, since 2008, ***the JC*** *is the person who is responsible for verifying the judgment execution conditions of the JDs*. If the JC requests executor to verify the judgment execution conditions, they must pay the verification cost and/or expenses. Specifically, a written request for judgment enforcement sent to the enforcement agencies by the JC must contain one of the important content, that is "Information on assets or judgment execution conditions of the JD".[959] In addition, in case of requested judgment enforcement, if JCs have applied necessary measures but are still unable to verify JDs' judgment execution conditions, they may request enforcers to do so. The request must be made in writing, clearly indicating the applied measures

[958] The 2004 Ordinance on Execution of Civil Judgments of Vietnam, Art. 14 Para. 4.

[959] The 2008 Law on Enforcement of Civil Judgments, Art. 31 Para. 1 Sub-para. dd.

and enclosed with proof documents.[960] According to the Art. 73 Para. 2 Sub-para. a of the 2008 Law on ECJs, JCs shall bear the expense for verification under Art. 44 Para. 1 of this law. Six years later, since 2014, however, as a result of the laws amending and supplementing a number of articles of the law on ECJs, *the competent person who has responsibility in verifying the properties and judgment execution conditions of the JDs is* ***the executor*** *(not the JC)*. Accordingly, enforcers have tasks and powers in verifying assets and judgment execution conditions of JDs (Art. 20 Para. 4), or within 10 working days after the deadline for voluntary execution of a judgment, if a JD fails to voluntarily execute the judgment, the enforcer shall conduct the verification. In case of implementation of a decision on application of provisional urgent measures, the verification must be conducted without delay (Art. 44 Para. 1).

(2) The statute of limitations for requesting judgment enforcement. Since 2004, the ordinance on execution of civil judgments stipulated that

"Within three years counting from the dates the judgments or decisions take legal effect, the JCs and/or the JDs may request competent judgment-executing bodies to issue decisions on judgment execution" (Art. 25 Para. 1).

According to the 2008 Law on ECJs and then 2014, the statute of limitations for requesting judgment enforcement is extended to 5 years instead of only 3 years stipulated by previous regulations.[961] However, compared with the general international standards, this statute is still too short. In Germany, the limitation period of 30 years applies only to certain claims, particularly claims for the return of property, under enforceable settlements or enforceable documents, for the reimbursement of the costs of enforcement.[962]

In addition, the CPV's major policies on civil judgment execution also lack stability and sustainability. This problem is clearly illustrated by the historical development of the CPV's resolution in relation thereto. For instance, the Resolution of the 8th Conference of the Central Executive Committee (VII) in January 1995 advocated as follows:

"Early construction and improvement of the law on judgment execution towards the direction of focusing on tasks state management of the execution of judgment on the Ministry of Justice".

[960] The 2008 Law on Enforcement of Civil Judgments, Art. 44 Para. 1.

[961] The 2008 Law on Enforcement of Civil Judgments; the LECJ, Art. 30 Para. 1

[962] Rützel, Stefan/Leufgen, Andrea/Wagner, Eric/Lutz, Gleiss: Litigation and Enforcement in Germany: Overview, https://uk.practicallaw.thomsonreuters.com/1-502-0728?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk.

Followed by the Resolution No. 49-NQ/TW issued one of the major undertakings in the field of civil judgment execution, that is *making available staff and physical infrastructure for the Ministry of Justice to assist the Government in carrying out the unified management of court judgments and decision enforcement*.[963] Until 2013, Report No. 112-BC/BCS continued to confirm that:

"After summing up 20 years of civil judgment execution work, it is true that the policy of unifying the judgment execution work defined in Resolution No. 49-NQ/TW.[964] Therefore, the Central Judicial Reform Steering Committee is requested to closely guide the review and submit to the Politburo for consideration and conclusion on the continuation of this policy under Resolution No. 49-NQ/TW at the appropriate time".

However, upon many years of research (almost 20 years from 1995 to 2014), the Conclusion No. 92-KL/TW of 2014 requested to stop the implementation of the policy on making available staff and physical infrastructure for the Ministry of Justice to assist the Government in carrying out the unified management of court judgments and decision enforcement, which was previously mentioned in Resolution No. 49-NQ/TW. Continuing to implement the model of the enforcement agencies as present, in which the Ministry of Public Security has been performing the function of state management over the enforcement of criminal judgments and the Ministry of Justice has been performing the function of state management over the enforcement of civil and administrative judgments.

Another major policy of the CPV on civil judgment execution concerned with the issuance of a uniform enforcement code. Since 2005, Resolution No. 48/NQ-TW was set out to develop a Judgment Execution Code that regulates all fields and aspects of judgment execution, to identify the Ministry of Justice as the agency that supports the Government in the uniform administration of judgment execution.[965] However, so far both major projects were recognized as unsuccessful. In 2008, instead of enacting a Uniform Enforcement Code, the Vietnamese Parliament promulgated two separate laws on enforcement (the 2008 Law on ECJs and then the 2010 Law on Criminal Enforcement). Solution to a unified agency to help the Vietnamese Government in

[963] Section II. 2. (2.2); *Nguyen, Van Nghia*: Some basic Contents of Judicial Renovation in Civil Judgment Execution, Democracy and Law journal, Vol. 8/2006, p. 7-9.

[964] Report No. 112-BC/BCS, p. 36.

[965] Section II.1. (1.5); *Nguyen, Van Nghia*: Some basic Contents of Judicial Renovation in Civil Judgment Execution, Democracy and Law journal, Vol. 8/2006, p. 6-7; *Nguyen, Van Nghia/Pham, Duc Thanh*: Civil Judgement Execution Departments in a Vietnamese rule-of-law Socialist State, Democracy and Law Journal, 2011, p. 172-173.

the management of the execution has not been set out in these two enforcement acts.[966]

It can thus be affirmed that the lack of stability and consistency from the orientation and policy with the provisions of the law in a long time in the field of judgment enforcement in Vietnam has imposed many challenges upon the enforcement. Moreover, Vietnam's limitations in the field of civil judgment execution also reflect the general limitations of the previous enforcement laws in former socialist countries. The result of a previous study indicated that:

"In reality, the Communist regimes did not have a pressing need for effective official mechanisms of enforcement, since the concentrated political power and omnipresent control of the Communist Party served as a strong parallel system which informally guaranteed compliance with all decisions that were considered important. For all other decisions (and most judgments were in this category), there was still a (mainly inherited) 'old' system of enforcement which was in a bad state: low in public esteem, poor in financial means, high in bureaucratization and excessive in formalities".[967]

2. In the light of our analysis, the LECJ also lacks many necessary regulations that can ensure the effectiveness of judgment execution, e.g., regulations ensuring the flexibility for executors, provisions on immunity when applying the CJE measures, or regulations establishing the simple judgment enforcement procedures for those judgments or decisions of small-value or simple nature. In terms of development and efficiency, enormous differences and huge gap between the legal provisions of Vietnam and international standards on the recognition and enforcement of judgments and decisions of foreign countries still exist. This leads to major practical obstacles and considerable difficulties for recognizing and enforcing judgments and decisions of foreign courts in Vietnam, as well as the judgments or decisions of the Vietnamese overseas. In contrast, along with the fully developed European legal system, the German legal system in the present matter has been consistent, comprehensive, viable and transparent in accordance with the international standards at the beginning of a new era (01 January 1900), the Deutsche Juristenzeitung carried the heading:

"Ein Volk. Ein Reich. Ein Recht" (One People. One Empire. One Law).

It marked the apogee of the age of legal nationalism.[968] All provisions of German law were enacted based on this foundation, including the basis of common European

[966] *Nguyen, Xuan Thu/Bui Nguyen, Phuong Le*: Textbook on the Civil Judgment Enforcement Profession, 2016, p. 19.

[967] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 84.

[968] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 8-9.

law, e.g., in the field of summary proceedings *(mahnverfahren)* or the electronic handling of the EOP.[969] In addition, the German system of civil procedures, especially the CJE law, is also recognized by many countries around the world as a model for developing their laws. One of the noticeable features on the purpose of the German Civil Justice System is that

"Germany's commitment to the principles of governance *by law, not men*, is demonstrated by the large size and high quality of its legal establishment".[970]

3. To summarize, the causes and fundamental limitations of CJE in Vietnam include:

(1) Lack of system of basic principles in civil judgment execution, including general principles and specific principles of CJE.

(2) The position and role of the enforcement agents has not been fully respected as a mechanism for protecting the fundamental rights of the citizens and establishing justice for the society. Unlike Vietnam, Germany considers the enforcement law as part of the constitutional law protecting the basic rights. In other words: Enforcement of law and judgments is an indispensable component of the constitutional legal protection guarantee. The constitutional legal protection guarantees for the enforcement of private rights (justification grant claim) includes the right to a legal cognitive procedure as well as the right to state enforcement. The Federal Constitutional Court of Germany takes this legal protection guarantee of the individual materially affected fundamental rights (e.g., Art. 2, 14 GG) in cooperation with the rule of law (Art. 20 (3), Art. 28 (1) S. 1 GG).[971]

(3) Vietnamese legal system, the LECJ, has failed to synchronize and unify provisions of the law on civil judgment execution with documents guiding the implementation of the Law, e.g., decree, circulation, and provisions of the enforcement law and other specialized legal areas.

(4) Vietnam has currently two parallel civil judgment execution systems, the system of state enforcement agencies executed by executors and the system of bailiff's offices enforced by the private bailiffs. The private bailiffs, however, often lack the practical experience in the execution of judgment and the system of organization and operation of bailiffs has not been completely developed. As a result, in the last few years, many violations in the course of enforcement were made by the private bailiff, causing damage to the involved parties.

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[969] *van Rhee, C. H./Uzelac, Alan*: Enforcement and Enforceability-Tradition and Reform, 2010, p. 30-31.

[970] *Murray/Stürner*: German Civil Justice, 2004, p. 4.

[971] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 1.3, p. 2.

(5) Under the Vietnamese law, the correlation between the rights and obligations of JCs and JDs is not appropriately specified. There are many unclear and overlapping provisions between the rights of JCs with JDs. Likewise, the obligations of the JDs regarding to the power of the executor or other involved parties are also not clear. In addition, there are conflicts between the LECJ and other specialized laws on the rights and obligations of the involved parties.

(6) There are enormous subjects involved, especially the agencies and individuals assigned to inspect and supervise judgment execution procedures, even though they are not specifically trained for the CJE profession. Conversely, the role of professional judges and the courts for judgment execution is too limited. Many judgments and decisions are either slowly transferred to the judgment enforcement agencies or the content decided in the judgment is unclear, causing great difficulties to implement the judgment or delay in explaining and responding after receiving the request of the judgment enforcement agency.

(8) Vietnam is a country that has the tradition of using hard cash, while the national system of asset registration and the relevant legal system are still incomplete. Therefore, the determination or identification of asset information from the JD is extremely difficult. In Vietnam, IT has not yet been applied widely, popularly and effectively in CJE procedures, e.g., enforcement notification, registering, storing and providing property information. Legal sanctions on the responsibilities of agencies would be incomplete or not effective enough if they are slow or do not provide valuable information on judgment enforcement assets.[972] Therefore, executors and private bailiffs face enormous difficulties in determining the information of the JD's asset.

(9) Provisional emergency measures to ensure judgment execution and property distraint to ensure judgment execution starting right from the investigation phase and trial stages are, in many cases, significant and play a decisive role for the judgment execution efficiency. If the agencies responsible for distraint of assets at the stage of the criminal and civil proceedings before, e.g., the investigating agencies or courts do not perform responsibility for distrainment or perform inadequately, there will be no assets to be enforced at the enforcement proceedings, because the property may have been dispersed, transferred to others already. In the last few years, e.g., many judgments concerning the economic and corruption crime were issued to collect a large amount of assets into the state budget, but the actual results were very low, sometimes totally unenforceable.

[972] *Nguyen, Bich Thao/Nguyen, Thi Huong Giang*: Improving the Mechanism to Examine Judgment Debtor's Ability to Satisfy Civil Judgments in Vietnam from International Experience, Journal of Science, Vol. 34 No. 1 (2018), p. 8.

(10) Vietnam lacks the international and foreign judgment execution experiences, especially international standards and recommendations related to effective judgment enforcement mechanisms. One possible reason is that Vietnam has not yet participated in many international documents, treaties or conventions related to judgment execution, nor become a member of many international organizations for judgment execution. Meanwhile, Vietnam is currently a member or a partner of various large trade and economic organizations in the world, e.g., ASEAN, AFTA, ASEM, APEC, WTO, BTA, CPTPP/TPP, FTA, IPA, etc. As a result, the Vietnamese laws on civil judgment execution are in the large part undeveloped, orthodox or left untended. This will be even more challenges for Vietnam as recently on 25 June 2019, the European Council adopted decisions on the signature of two agreements between the EU and Vietnam, including FTA and IPA. Both agreements were signed on 30 June 2019, in Hanoi, closing the negotiation process lasted seven years from June 2012.[973] President of the European Commission Jean-Claude Juncker stated that:

"The trade and investment agreements with Vietnam are exemplary of Europe's trade policy. They bring unprecedented advantages and benefits for European and Vietnamese companies, workers and consumers. They take fully into account the economic differences between the two sides. They promote rules- and values-based trade policy with strong and clear commitments on sustainable development and human rights".[974]

However, Vietnamese law and the Vietnamese enforcement law are still very deficient. While, as discussed above, the enforcement law of Vietnam and the enforcement law of Europe still have certain differences. Meanwhile, the effectiveness and efficiency of the judgment enforcement work, investment and economic development has dialectical and strict mutual relations.[975] Mrs. Viviane Reding insisted that:

"The attractiveness of a country as a place to invest and do business is undoubtedly boosted by having an independent and efficient judicial system. That is why predictable, timely and enforceable became an important structural component of the EU's economic strategy".[976]

In that context, along with the policy of attracting investment, creating trust for investors, ensuring the legal safety, the Vietnamese CJE policies and laws must be quickly renewed and improved in order to promote and ensure their practical

[973] https://www.consilium.europa.eu/en/press/press-releases/2019/06/25/eu-vietnam-council-adopts-decisions-to-sign-trade-and-investment-agreements/

[974] http://trade.ec.europa.eu/doclib/press/index.cfm?id=1921

[975] *The Scientific Council of the UIHJ*: The Preamble of the GCE, 2016, p. 129-130.

[976] *The Scientific Council of the UIHJ*: The Preamble of the GCE, 2016, p. 127.

feasibility. Below are some possible potent solutions to applied research mainly in Vietnam in the field of CJE:

(1) The content of international laws and international practices on civil judgment execution should be updated and supplemented into training programs for judgment enforcement officials. It could be further supported by promoting studying, exchanging of cases and good experiences on CJE of foreign countries, e.g., Germany through international conferences and forums on civil procedures and civil judgment execution procedures. Having mentioned the international cooperation in the enforcement area, the World Enforcement Conference of Shanghai addressed that enforcement organs should carry out exchange and mutual visits, and thereby improve the enforcement personnel's professional quality and security.[977]

(2) There are indisputable facts:

"We live in a globalized world. Enforceable titles circulate around the world and it is important to find enforcement rules at global level".[978]

Therefore, studying and proposing common global standards for judgment enforcement by proposing construction of international conventions on the ECJs. This could be a next step-in researching, completing the Convention on the Recognition and Enforcement of foreign Judgments in Civil and Commercial Matters 1971 when the international situation has considerably changed with the rapid increase in the number of cross-border legal disputes.[979] This Convention was the result of being inherited and developed from previous judgment execution conventions. The first results were achieved by the Convention on the Recovery Abroad of Maintenance dated 20 June 1956, came into force 25 May 1956, followed by the draft of the Convention on the Recognition and Enforcements of Foreign Judgments which was elaborated by the 1960 International Law Association.[980] The next Convention was the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.[981]

This new international convention on the ECJs should also mention compulsory measures to enforce effective judgments or decisions of both the competent authority of the member states as well as from international institutions, international court or tribunal, addressing the restrictions of current international laws. On a global scale, this convention should also study, how will the international legal instruments resolve if one of the involved parties will not recognize the authority of the

[977] *The UIHJ*: The World Enforcement Conference of Shanghai, China, 22 January 2019, Point 7.

[978] *Andrieux, Françoise*: A Global Code of Enforcement for All Countries of the World, 2014.

[979] https://assets.hcch.net/docs/bacf7323-9337-48df-9b9a-ef33e62b43be.pdf.

[980] http://www.refworld.org/docid/3dda24184.html.

[981] *Kengyel, Miklós*: Transparency of assets and enforcement, Vol. 19, 2014, p. 317.

international court or tribunal, will not join the proceedings, will not accept enforcement of the court judgments, decisions or arbitral awards?[982] If a civil judgment related to an individual not to be executed, it may affect the interests of one person or a few people. However, if a judgment related to a country's lawsuit about the sovereignty is not executed, it may affect the rights, affect the lives and the fates, even threaten the lives of millions of people, even entire a nation, or a country.[983] Justice is not executed, the risk of war and human life will be threatened, international justice will be seriously threatened. Meanwhile, the UN's role is extremely important, but the role of this organization in current practice is still being faced with a lot of controversial issues and many warnings about global human rights violations have been put in place.[984] This continues to be the basis for confirming the relationship between the civil judgment enforcement law and international law, the relationship between domestic judgments and international court judgments that are effectively enforced with the protection of human rights on a global scale.[985] The international arbitration ruling of the court of arbitration on 12 July 2016 established under Annex VII of UNCLOS in 1982 on the lawsuit between the Philippines and China (PCA Case Nº 2013-19) is a striking illustration.[986] The judgment has not yet been enforced, the international justice therefore has not yet been enforced, the effectiveness of international law is being seriously challenged, as a result.

Similar situation with the World Court's 17 March 2016 Judgments on Preliminary Objections in Nicaragua v. Colombia.[987] However, this court has no clear mechanism for the enforcement of its judgments. On a national scale, the primary objective is to help poor, slow-developing countries with incomplete legal systems and enforcement laws to participate actively in this convention, to ensure the minimal protection of human rights as well as the rights and benefits of participants in civil, economic, commercial, marriage and family transactions in private international law. The Convention may also serve as a legal basis to be used to solve the problems and other shortcomings related to the practical recognition and enforcement of judgments and decisions of foreign courts.[988] This convention should provide a higher effect and should be prioritized in comparison with domestic laws. National legal provisions

[982] *Nguyen, Hung Cuong/Nguyen, Ba Dien*: Decision of the International Arbitration Court toward the lawsuit between Philippines and China: Legal validity and implications for Vietnam, 2018; 4(11), p. 3, 5-6.

[983] There is a strong connection between the CJE and national sovereignty, as well as between the enforcement law and the international law, see the Introduction of Chapter 1.

[984] *Omar Abdul Razzag, Amal/Mahdi Saleh, Mohamad*: The Role of the Legal Global Government in the Enforcement of the Human Rights Law, 2016, p. 295-309.

[985] *Kerameus, Konstantinos D.*: Enforcement in the International Context, 1998, p. 197-198.

[986] https://pcacases.com/web/sendAttach/2579.

[987] *Desierto, Diane*: A New Theory for Enforcing International Court of Justice Judgments? The World Court's 17 March 2016 Judgments on Preliminary Objections in Nicaragua v. Colombia.

[988] See more detail in A. Chapter 1. V. 4. b).

should also apply the principle of priority international treaties. In this respect, Vietnamese law regulates that the application of Vietnam's legislative documents must not obstruct the implementation of the international agreements to which Vietnam is a signatory. In case a Vietnam's legislative document (except the Constitution and international agreements to which is a signatory) contains different regulations on the same issue, the international agreement shall apply.[989] In addition, the 2016 Law on Treaties of Vietnam also states accordingly that in cases where a legal document and a treaty to which Vietnam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail, except the Constitution.[990]

(3) On the basis of International Convention on CJE (if it may be signed in the future), the member states of the Convention should establish a Central Agency, representing the country, in order to solve the problem of enforcement related to foreign countries. This central agency with national authority to enforce the judgment should be established in the same way as the central authority which is competent to represent children's rights established under the Convention on the Civil Aspects of International Child Abduction 1980 (Chapter II). Furthermore, until now, Vietnam has not yet signed this Convention, while Germany has signed it in 1987 and has ratified in 1990.[991] This law contains regulations relating to the simplification and speeding up the return of wrongfully removed or retained children and providing for the immediate enforceability of the return order as well as the concentration of proceedings. Therefore, Vietnam should ratify this Convention and amend the provisions of the law on civil judgment enforcement related to the protection of children's rights.[992]

(4) Vietnam and the Federal Republic of Germany should sign a mutual legal assistance agreement as soon as possible, the contents of which may include an agreement on recognition and enforcement of judgments and decisions of courts. Moreover, Vietnam should also sign mutual legal assistance agreement with other countries where many Vietnamese people reside, e.g., Russia, Ukraine, the USA, Taiwan, Korea, Japan and Australia.

(5) Currently, the Vietnamese laws on ECJs consist of many different documents, e.g., the CPC 2015, the LECJ, the 2015 Law on Administrative Procedures and secondary laws or legal documents which have lower legal effect, e.g., Decree No.

[989] The 2015 Law on Promulgation of legislative Documents, Art. 156 Para. 5.

[990] The 2016 Law on Treaties of Vietnam, Art. 6 Para. 1; *Tran, Huu Duy Minh*: The Issues of the legal Effect of Treaties within Vietnamese legal System and the Application of international Treaties in Vietnam, Vol. 3 (189), (3/2016), p. 38-46.

[991] https://www.hcch.net/en/instruments/conventions/status-table/?cid=24.

[992] *The Committee of Ministers of the CoE*: Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2018, 12th Annual Report of the Committee of Ministers, p. 33.

62/2015/ND-CP, the circular, joint Circular, decision, etc. In the case at hand, the LECJ alone regulates too many contents. This law prescribes (a) principles, order and procedures for ECJs and decisions, fines, confiscation of assets, retrospective collection of illicitly earned money and assets, handling of material evidences and assets, court fees and civil decisions involved in criminal judgments and decisions, property parts of administrative judgments and decisions of courts, bankruptcy settlement decisions of courts, decisions on settlement of competition cases related to assets of JDs by the Council for settlement of competition cases, and awards and decisions of commercial arbitrations; (b) the system of CJE organizations and enforcers; (c) rights and obligations of JCs and JDs, and persons with related interests and obligations; (d) tasks and powers of agencies, organizations and individuals in CJE activities.[993]

The aforementioned structure of Vietnamese CJE law should be changed. Accordingly, the current civil judgment execution law should be separated into independent laws on enforcement, including the Law on Civil Judgment Execution Procedures; Law on Organization of Civil Judgment Execution System and Law on Executor and Bailiff (or Law on the Enforcement Agents). CJE provisions that are in other laws or in sub-law documents should also be included in these laws. The reform and innovation of the law on civil judgment execution in Vietnam is essential, because if it succeeds, the new and effective enforcement law will contribute substantially to the economic growth of the country. In addition, the established global standards of enforcement must provide the effective enforcement procedures as well as guarantee the standard quality of the enforcement agents, the effective system of CJE agencies, and the protection of rights of all involved parties

(6) The nature of civil judgment execution should be determined based on three criteria: (a) the nature of the judgment to be executed, (b) the characteristics of the property to be enforced, and (c) the requirements of basis human rights to be protected. From there, it is possible to determine which type of judgment must be enforced by the court (judge)/enforcement court, which type of judgment can be enforced by the executor, which type of judgment requires stronger intervention and closer supervision by the judge, and which type of judgment should increase the authority and proactiveness for the executor. In other words, the criteria help to answer the question, e.g. which type of judgments (or enforcement procedures) can be carried out by the private bailiff and which type exclusively by means of state enforcement. This is an important basis for regulating simple, fast, and effective CJE procedures. In this regard, the civil judgment execution model of the Federal Republic of Germany provides an excellent example, especially the role of the court

[993] The LECJ, Art. 1.

in the course of enforcement (§§ 897-890 ZPO) and the classification of the enforcement, including the enforcement for money claims (§§ 803 to 882a ZPO), the compulsory enforcement serving to obtain the surrender of objects (§§ 883 to 886 ZPO), and to ensure that actions are taken or refrained from (§§ 887 to 898 ZPO).[994]

(7) In Vietnam, private bailiffs are not public servants and operate in the form of private enterprises. In addition, supervision of bailiffs' activities is still not strict enough, so it is necessary to amend the provisions of the law on private bailiffs, whereby such amendment should not grant the private bailiff the power to use coercive measures to enforce the judgments.[995]

(8) Furthermore, the Vietnamese Government and Parliament should implement projects of surveying, summarizing and evaluating the characteristics of all types of court judgments and decisions as well as analyzing and evaluating characteristics of various types of obligations to be executed according to judgments and decisions. The survey should include statistical characteristics, the nature of the assets, property ownership, the relationship between the characteristics of each asset, ownership with civil obligations related to assets. The purpose of this survey is to find out whether the existing measures and procedures for civil judgment execution are suitable, scientifically reliable, and consistent with the characteristics of each type of property or civil obligation as well as in accordance with international standards.[996] For example, relating to the special nature of the goods, on 15 August 2019, the Department of Ho Chi Minh City Civil Judgment Execution conducted a forcible transfer of assets was a hospital, containing two radiotherapy machines. These machines contain radioactive substances which are dangerous to human health and the environment. This judgment was issued by the Ho Chi Minh People's Court in 2011 but the JD did not voluntarily enforce. Because the enforcement law of Vietnam has no provisions regarding enforcement procedures for assets that are radioactive. Therefore, the judgment has not been enforced for a long time (8 years) and has caused many difficulties for the judgment enforcement agencies.[997] This is also a "legal gap" of Vietnamese CJE law compared to international standards. Thus, the Vietnamese enforcement law needs to be supplemented in accordance with the

[994] *Lüke, Gerhard/Hau, Wolfgang*: Zwangsvollstreckungsrecht, 3 Aufl., 2008, p. 7; *Lippross/Bittmann*: Zwangsvollstreckungsrecht mit einstweiligem Rechtsschutz und Einführung in das Insolvenzrecht, 12. Aufl. 2017, Rn. 5, p. 2.

[995] *Nguyen, Van Nghia*: Vocational Orientation Development the Profession of Bailiffs in Vietnam and Legal Issues need Improvement, Democracy and Law Journal, Vol. 5 (314)/2018, p. 3-8; *Nguyen, Van Nghia*: The Development of the Private Bailiff Profession in Vietnam and New Legal Issues arising, Legal Scientific Research, 2018.

[996] The GCE, Art. 28, 29, 30.

[997] *Cam Tu*: The Department of Ho Chi Minh City Civil Judgment Execution has executed a complicated case, 2019.

international law, whereby, states shall adapt the measures of execution to the legal status of the seized assets (Art. 30 of the GCE).

(9) Besides the aforementioned method, Vietnam will also profit from an attempt to build and improve the legal system and relevant institutions on asset registration, protection and provision of property information, cash control.

(10) The Vietnamese Government should set up a National Fund for the purpose of supporting the enforcement of the judgment. This fund may be contributed from the national budget, businesses, deducting a portion of assets from the judgment enforcement of confiscated public funds. The fund's assets are intended to ensure support to implement all or parts of the judgment that no property or unenforceable. The Fund's intervention aims to ensure the implementation of fundamental human rights and protect the minimum rights and interests of the JCs and the JDs.[998] Life is short, *"Das Leben ist kurz",*[999] especially in case the JD in a situation of "extreme distress" and intends to commit suicide.[1000] Therefore, do not let unfortunate persons/innocent persons who encounter legal risk waste for decades pursued a judgment because of the limitations of the legal system or mistakes by the state's civil servants or fault from the defendants or recklessness of the JD.[1001] They need to be offset somewhat the loss, disadvantaged materially and spiritually. The precautionary principle should be set out here to prevent the uncertainty of the law.[1002] The illegalities from the person who is assigned to execute the judgment is a civil servant, not only causing special difficulties for the judgment execution but also affecting the rights of the JC. Therefore, in these cases, e.g., the role of this fund will promote the role and its effect.[1003] This Fund will be organized and operated similarly to the Human Rights Trust Fund which was set up in 2008 and initially supported by the CoE and the European Development Bank, Norway, Germany, the Netherlands, Finland and Switzerland.[1004]

(11) The Vietnamese Government should establish a Socio-Professional Organization of Executors and Private bailiffs. This organization will have many functions, e.g., representing the public enforcement agents (the executors) and private bailiffs and protecting their legitimate rights and interests, operating throughout the country. This organization should also be capable of appointing its

[998] For example, support the poor JD and the poor JC, see C. Chapter 3. III.

[999] *Gaarder, Jostein*: Das Leben ist kurz, 1997.

[1000] *The Committee of Ministers of the CoE*: Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2018, 12th Annual Report of the Committee of Ministers, p. 36.

[1001] *Steele, Jenny/Gardner, John*: Risks and Legal Theory, 2004, p. 92-103.

[1002] *Steele, Jenny/Gardner, John*: Risks and Legal Theory, 2004, p. 192-199.

[1003] *Baur/Stürner/Bruns*: Zwangsvollstreckungsrecht, 13. Aufl. 2006, Rn. 11.1, p. 127.

[1004] *Schneider, Jan*: Reparation and Enforcement of Judgments: A Comparative Analysis of the European and Inter-American Human Rights Systems, PhD. Thesis, 2015, p. 195-196.

members to join the international judicial officials' associations to exchange and study international judgment execution experiences.[1005] An establishment of the Socio-professional Organization of Executors and Private Bailiffs in this regard is suitable and consistent with the standard of international legal practices in the field of civil judgment execution. The Guidelines for a better implementation of enforcement of 17 December 2009 recommended that

"With a view to good administration of justice, it is desirable that enforcement agents should be organized in a professional body representing all members of the profession, thereby facilitating their collective representation and the gathering of information. Within the member states which have established professional organizations of enforcement agents, membership of this representative body should be compulsory".[1006]

This professional body responsible for supervision and/or control of enforcement agents has a central role in guaranteeing the quality of enforcement services, ensuring the enforcement activities are being assessed on an ongoing basis. This assessment should be performed by a body external to the enforcement authorities and control procedures should be very clearly defined.[1007] In the future, this professional body may support and help or partially replace the role of procuracies in the supervision of CJE that exists major limitations. Professional organizational model of many European countries or the CIVEA in the United Kingdom are typical examples. In the United Kingdom, the CIVEA is the association representing over 2,000 enforcement agents operating throughout England and Wales.[1008]

(12) In addition, executors and private bailiffs in Vietnam may also be required to purchase the insurance for professional liability. In Vietnam, in the field of justice, such insurance is compulsory to legal consultancy operations, lawyers, notaries, and auctioneers. Specifically, the 2013 Law on Insurance Business of Vietnam regulates that professional liability insurance for legal consultancy operations is mandatory.[1009]

Regarding the responsibility to have the professional liability insurance of lawyers and the 2006 Law on Lawyers which was amended and supplemented 2012 stipulates that law-practicing organization (including lawyers' offices and law firms) has obligation to provide their lawyers the professional liability insurance (Art. 40 Para. 2) as prescribed by the Law on Insurance Business (Art. 8 Para. 2 Sub-para. b). In

[1005] *The Committee of Ministers of the CoE*: Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2018, 12th Annual Report of the Committee of Ministers, p. 28.

[1006] No. 29, 30.

[1007] *Gramckow, Heike*: Good Practices for Monitoring the Effectiveness of Enforcement Actions and Assessing the Performance of Bailiffs, 2014, p. 57-58.

[1008] http://www.civea.co.uk/

[1009] Art. 8 Para. 2 Sub-para. b.

addition, an independent lawyer, a lawyer working under a labor contract for an organization that does not practice law primarily, must buy professional liability insurance as prescribed by the laws on insurance business if it is agreed upon in the labor contract.[1010] The notary public is also required to purchase professional liability insurance. According to the 2014 Law on Notarization of Vietnam,[1011] professional liability insurance is compulsory for notaries. The professional liability insurance for notaries must maintained throughout the operation duration of a notarial practice organization. Notarial practice organizations are obliged to purchase professional liability insurance for their notaries.[1012] Furthermore, under the professional ethics of auctioneers (annexed to the Circular No. 14/2018/TT-BTP dated 16 October 2018 of the Minister of Justice), an auctioneer shall be responsible for participating in the professional liability insurance program through a property auction in order to provide for occupational risks or accidents that may occur.[1013]

Currently, the Vietnamese law does not prescribe compulsory purchase of professional liability insurance for executors and private bailiffs. Although Decree No. 61/2009/ND-CP stipulates that any bailiff intending to register operations of his/her bailiff office must make a deposit of VND 100 million or be covered by occupational responsibility insurance. However, this is only a discretionary regulation, without binding to buy professional liability insurance for the activities of bailiffs. Until now, the private bailiff has not yet bought professional liability insurance because this is not a compulsory regulation. Moreover, the insurance organization has not provided professional liability insurance service for bailiffs.[1014]

Lastly, Report No. 63/BC-BTP also proved that in the course of operation, if there are errors in the professional practice, it is easy to incur liability for executors. Therefore, it is necessary to build a mechanism ensuring the legal safety and limiting the risks for executors during operation. However, this report has not yet shown what the legal mechanism is to ensure safety for executor. Therefore, in the future, Vietnamese law should provide that practicing executors and private bailiffs must be guaranteed by professional liability insurance. This is a mechanism to ensure legal safety for executors and protect the rights of the victims caused by executors during the execution of the judgment. In Germany, legal cost insurance is quite common which could be a rewarding experience for Vietnam.[1015]

[1010] The 2006 Law on Lawyers (was amended and supplemented 2012), Art. 49 Para. 1, 2.

[1011] took effect on 01 January 2015.

[1012] Art. 37 Para. 1, 2.

[1013] Art. 8 Para. 2.

[1014] Document No. 1128/BTP-TCTHADS dated 18 April 2014 of the Ministry of Justice of Vietnam about Pilot Performance of Bailiffs.

[1015] *Zekoll/Wagner*: Introduction to German Law, 3rd ed. 2019, p. 493.

The requirement to purchase professional liability insurance for executors and bailiffs in Vietnam is necessary and consistent with international practices, which is where enforcement agents are independent professionals, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. This account should be subject to inspection. They should also be required to take out professional and civil liability insurance.[1016]

(13) Ultimately, recently, FTA and IPA were signed between the EU and Vietnam. The trade agreement will eliminate over 99% of customs duties on goods traded between the two sides. Vietnam will remove 65% of import duties on EU exports from entry into force of the agreement, with the remainder of duties being gradually eliminated over a 10-year period, to take into account that Vietnam is a developing country.[1017] Making sure the agreed rules are enforceable.[1018] This is extremely convenient but also has a major challenge for both sides: Vietnam and EU, especially in the field of civil judgment execution. President of the European Commission Jean-Claude Juncker wished that:

"I now expect the European Parliament and EU Member States to do the necessary for the agreements to enter into force as soon as possible".

Commissioner for Trade Cecilia Malmström also stated that:

"The Commission has now delivered two valuable and progressive agreements with Vietnam that I am convinced the European Parliament and EU Member States can support. Vietnam has massive potential for EU exporters and investors to do business, both now and in the future. It is one of the fastest-growing economies in Southeast Asia, with a vibrant market of more than 95 million consumers, an emerging middle class and a young, dynamic workforce. Through our agreements, we also help spread European high standards and create possibilities for in-depth discussions on human rights and the protection of citizens. I hope the Council and the European Parliament will approve the agreements swiftly to allow businesses, workers, farmers and consumers to reap the benefits as soon as possible."[1019]

Besides, such wishes and advantages, there will certainly be difficulties and challenges may arise in the coming time. In terms of enforcement, in order to successfully implement the two important agreements mentioned above, right now the standards of European law as well as the standards and principles of enforcement laws of EU or the European Council should be widely disseminated in Vietnam. At

[1016] *The CEPEJ*: Guidelines for a better implementation of enforcement of 17 December 2009, No. 36.

[1017] More detail see: http://trade.ec.europa.eu/doclib/press/index.cfm?id=1922 and http://trade.ec.europa.eu/doclib/press/index.cfm?id=1921.

[1018] http://ec.europa.eu/trade/policy/in-focus/eu-vietnam-agreement/.

[1019] http://trade.ec.europa.eu/doclib/press/index.cfm?id=1921

the same time the current Vietnamese legal system in general, Vietnam's Law on CJE needs to be popularized in the Europe. Unluckily, so far, in Vietnam, there are not specialized books on the enforcement of civil judgments written in English or translated into English, except a number of laws translated into English. In fact, the language barrier has hindered research on the enforcement law of Vietnam to the outside world. Therefore, two high-quality books have been newly published in Vietnam, fully addressing and in-depth analysis of the issues of Vietnamese CJE laws as well as other relevant legal areas should be translated into English, German and provided as research documents in Europe, which are Handbook on ECJs in Vietnam and Commentary on Civil Judgment Enforcement Law.[1020] These two books fully mentioned the organizational system of the civil judgment execution; civil judgment execution procedures; complaints and denunciations in civil judgment execution; the compensation liability of the state in the civil judgment execution; enforcement of foreign judgments; limitations and inadequacies of Vietnamese CJE laws in correlation comparison with international standards on the ECJs, especially the comparison of the Vietnamese CJE laws with European judgment enforcement standards and the enforcement laws of the Federal Republic of Germany. In addition, this thesis is undoubtedly the first study in English analyzing the current situation of the CJE law of Vietnam in comparison to the international standards and the experiences of the Federal Republic of Germany. The proposed solutions and recommendations in this thesis could be a great significance in the effective implementation of the two above-mentioned agreements between Vietnam and the EU. This research paper may not only valuable for scholars but also may useful for the European investors who are being implemented the investment projects or will invest in Vietnam in the future. This first research paper in this field may be translated into Vietnamese language with the purpose of providing international standards and invaluable experiences of the Federal Republic of Germany on the judgment execution in order to improve Vietnamese law on enforcement.

[1020] *Hoang, Thi Thanh Hoa/Nguyen, Van Nghia*: Handbook on Enforcement of Civil Judgments in Vietnam, 2018 and *Hoang, Thi Thanh Hoa/Ho, Quan Chinh/Nguyen, Van Nghia*: Commentary on Civil Judgment Enforcement Law, 2019, 1st ed. August 2019.

Summary

1. The aim of this study is to write up the findings on possible solutions for improving the civil judgment enforcement law of Vietnam, simultaneously ensuring effective and efficient execution process in conformity with the international standards. It is generally accepted that international laws and legislative experiences in developed countries are always invaluable source of reference for developing countries, e.g., Vietnam, where its legal system is critically evaluated to be deficient, overlapped and mutual-conflicted between the domestic laws and somewhat inconsistent with the international requirements. This study presents the international standards and precious experiences of some countries on the enforcement of civil judgments, focusing on German law, which is a fair, consistent, efficient, comprehensive and accessible judicial system. Once, this dissertation analyzes the current situations of the Vietnamese enforcement law and its primary obstacles in practice in comparison to the international laws thereof. In an attempt to achieve the above objectives, the comparative methods were commonly utilized. This method was chosen because it is one of the most practical ways to obtain the research results.

2. The title of the research is *"International Standards on the Enforcement of Civil Judgments: Current Situations and Possible Solutions for Vietnam"*, composing of four chapters, each chapter dealing with different aspects of the civil judgment enforcement and presenting new findings.

3. The first chapter explores a set of principles that are considered as new international standards in the field of civil judgment execution compared to the principles of judgment enforcement of Vietnam, e.g.: (1) The right of enforcement must be respected as fundamental human rights; (2) Judgment debtors must be obliged to provide all information on his/her assets; (3) All relevant bodies, both public and private are responsible for disclosing information about the debtors as quickly as possible; (4) Enforceable titles should be clearly and comprehensively defined, including the conditions of its enforceability; (5) Reasonable and foreseeable time limits of the timelines for enforcement procedures; (6) Costs of enforcement must be fixed, predictable, transparent and reasonable; etc. Besides, the principal characteristics of the judgment execution principles in German law, e.g., amicable settlement, mediation or conciliation process, arrest warrant, affidavit or declaration in lieu of an oath, electronic documents, list of debtor's assets, principle of good faith, etc., provided in ZPO are also helpful lessons for Vietnam. We confirm that these new principles in the enforcement area could be useful for the Vietnamese policymakers and lawmakers in boosting the system of basic principles in civil judgment enforcement.

4. The remarkable research findings to emerge from the second chapter, which includes: (1) A professional body of the enforcement agents representing all members of the profession should be established. The civil judgment enforcement system of Vietnam is a mixed (hybrid) system without a professional body thereof. The number of unexecuted judgments in recent years has revealed that this system to some extent operates ineffectively in practice. (2) The professional status of the enforcement agents and the judicial officers should be clearly defined in the national law so that brings as much legal certainty and transparency to the enforcement as possible. By contrast, the legal status of the executors and private bailiffs in Vietnam have not been fully, or clearly defined. (3) This study examines a series of new international standards on the rights and obligations of the enforcement agents and judicial officers, e.g., sole competence for enforcement and implement of all the enforcement procedures; enforcement agents must be given the necessary autonomy to choose for themselves the procedural steps that are the most appropriate for the case and enforcement measures should be flexible so that the judgment agent or judicial officer may choose among them in keeping with the circumstances (Chapter 3); several forms and aspects of enforcement proceeds should be exclusively exercised by the State; their remuneration should be adequate commensurate with level of training, the difficulties and challenges in their task; professional secrecy, professional and civil liability insurance are mandatory responsibility of the enforcement agents. Conversely, in Vietnam, executors are not given fully necessary powers; their remuneration is low and not based on the level of training and challenges of their task; lack of provisions on professional secrecy and purchase professional and civil liability insurance for executors. (4) Another new finding is that in accordance with the international law, only judge can rule on disputes arising from the enforcement and order the measures necessary for its implementation; only judge may have power to suspend or postpone enforcement to take account of the circumstances of the litigants. Nevertheless, in Vietnam, not only the Chief Justice of the Supreme People's Court and of the Collegial People’s Courts, but also the Chairperson of the Supreme People’s Procuracy and of the Collegial People’s Procuracy have the right to decide on the postponement and/or suspension of enforcement of judgments or decisions. Besides, heads of civil judgment enforcement agencies may issue decisions to postpone judgment enforcement. (5) Supervision and/or control of enforcement agents by an external body is essential for the purpose of guaranteeing the quality of enforcement services. Therefore, it should be determined clearly during inspection with the aim of smooth and prompt enforcement. The experience of Germany has shown that most executions are carried out under the supervision of the local courts and the ongoing supervision of the execution process as well as the determination of issues arising in connection with

that process are also the responsibility of these courts. On the contrary, in Vietnam, the civil judgment enforcement procedures are strictly supervised by the procuracies, several organs and by the law. Unhappily, if they make mistakes or causes damage to the parties in the course of enforcement, there is unclear legal liability for the damage.

5. The first striking value in chapter three indicates that an effective judgment execution mechanism needs to ensure compliance with the principle of proportionality which is a proper balance between the right of the creditor and the protection of the fundamental rights of the debtor in line with the provisions of both article 6 and 8 of the European Convention on Human Rights. Enforcement on the person of the debtor must comply with the international Conventions, e.g., enforcement on other members of the debtors` family must be prohibited; the rights of children and their best interests should be a primary consideration. Consistent with international standards, German law establishes at least two basic principles which are the right to free development of personality (Art. 2 GG) and free party disposition or principle of party control. Unfortunately, these crucial principles have not yet been specified in the Vietnamese judgment enforcement law, hence, the rights and obligations of judgment creditors and judgment debtors are not clearly distinguishable by the laws, e.g., some rights of the debtors should be, conversely, their obligations. Sometimes, the minimum rights of the debtor`s family members are not guaranteed, e.g., the right to have a minimum accommodation; a lack of necessary regulations concerning to the committing suicide of the debtors; a lack of provisions on the protection of rare animals, etc. Another finding in this chapter is that the immunity from the enforcement measures must be clearly specified in the national law under the international requirements, but it is completely new and not yet prescribed in the Vietnamese enforcement law.

6. Chapter four presents the international standards on the provisional (interim) emergency measure which is a goal of preserving the rights at stake of either party considered an indispensable means of guaranteeing the enforcement of civil judgments. The provisional measures should be simple and rapid in order to provide interim solutions and ensure the effective protection of the rights of the parties, as well as the efficiency of judicial proceedings. Germany has swift, simple and effective provisional measures or provisional enforceability, including the attachment of assets or arrest of the debtor and temporary injunctions. Unluckily, regulations on provisional measures and its implementation in Vietnam are still intricate and outdated. Its hinderances are also rigorously reviewed in this chapter.

7. Based on these results, a number of valuable suggestions are made for the purpose of enhancing the Vietnamese legal system and improving the efficiency of

civil judgment enforcement. We hope that our research will be beneficial in solving the difficulty of the enforcement work in Vietnam. On a wider level, we are confident that our research will serve as a base for future studies on the international judgment enforcement law.

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