

COMPARATIVE LEGAL ANALYSIS OF THE PROCEDURAL ARRANGEMENTS FOR ATTACHMENT OF EARNINGS OF A DEBTOR IN THE LAW OF THE RUSSIAN FEDERATION AND CHINA

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Abstract

Enforcement proceedings in any country of the world are the most important institution of civil legal relations and in most cases is the final stage of the settlement of disagreements between the disputing parties. Forcible withdrawal of another's property based on court decisions restores the violated rights of parties and establishes the primacy of law in modern society.

The organization of the enforcement proceedings, its internal structure, as well as the powers of the executive bodies in each country, is regulated based on the current needs of society, the legal system, and historical background. The similarities of executive legislation of different countries are the instruments of enforcement bodies, acting on the debtor in order to force him to perform the court decision in full.

One of these tools, widely used by the bailiffs of the Russian Federation, is the foreclosure on the income of a debtor. The relatively simple enforcement procedure in the legislation of the Russian Federation related to the foreclosure by bailiffs leads to the law of the country, which is the leader in dispute resolution in the Asia-Pacific region, namely, the law of China, in order to compare the relevant procedural rules and determine potential opportunities for improvement of legal mechanisms governing the considered method of enforcement proceedings.

This article provides a comparative analysis of the procedural rules governing the garnishment of wages and other income of a debtor in China and the Russian Federation. The result of the study is to identify the advantages and disadvantages of the process of implementing this method of enforcement proceedings and develop recommendations for further improvement of the legislation in the countries under consideration.

To achieve this goal, the following tasks are defined:

- To identify and analyze procedural legislation governing the process of foreclosure on the income of a debtor in Russia and China in enforcement proceedings;
- To identify the trends in the reform of procedural legislation on the enforcement proceedings of the Russian Federation and China;
- To develop recommendations for the implementation of the right to enforcement proceedings in these countries.

The methodological basis of the study consists of general scientific methods of cognition, including systemic, formal-logical, structural-functional analysis, as well as specific legal methods: comparative legal and formal legal. The scientific novelty of the study is a comprehensive study of enforcement proceedings

and consideration of the possibility of borrowing the approach of China into enforcement proceedings in the Russian Federation.

A comparative analysis of the legislation on enforcement proceedings of the Russian Federation and China, governing the foreclosure on the debtor income, was carried out using methods of logical and statistical analysis, general scientific and specific oriented methodology.

The results of this study can be used in the development of legal acts, regulating enforcement proceedings, as well as to improve the legislation of the countries in question. The authors do not object if the conclusions and materials of this article are used in research activities, law enforcement practice, teaching, during lectures and seminars on the civil process and private international law.

Keywords: enforcement proceedings, execution creditor, debtor, salary, income, arrest, marshal, bailiff.

1. INTRODUCTION

At any time, no country, no state could ensure the rule of law without an institution, capable of effectively and quickly put into practice the decisions of the courts and other public authorities (Rusakova E.P., 2019).

At present, taking into account the diversity of public relations, an increase in the responsibilities of citizens to provide various reporting and implementation of registration actions, the level of responsibility has increased (Duduin M.N., 2017). In case of failure to fulfill their duties, sanctions, in the process of which the executive bodies participate, are imposed on the person. The executive bailiffs of various countries began to widely apply such a measure of enforcement, as the seizure or levy of execution on the part of the income of a debtor-citizen. The procedure for applying this enforcement measure in Russia and China has become the subject of analysis and comparison in this article.

Legislation on seizing the debtor's income in a modern form was formed in China and Russia almost simultaneously in 1996 and 1997, respectively. Significant changes have been made to the Russian legislation: it is about the adoption of a new Federal Law "On Enforcement Proceedings." In China, provisions on enforcement proceedings contained in the Civil Procedure Code and other legislative acts, for example, the Administrative Punishment Act, where administrative bailiffs are given the same powers as bailiffs in people's courts. Since then, there have been no significant changes in the legislative regulation of the procedure for applying a penalty to a debtor income in both countries.

Analyzing the adopted laws in the countries under consideration, it can be stated that the countries had different goals when making changes to the procedural regulations for applying attachment of the debtor's earnings. In particular, Russian law has become more loyal to debtors, including an additional six types of income, to which it was forbidden to impose a levy. In the PRC, on the contrary, they authorized the administrative authorities to apply attachment of the debtor's earnings in order to accelerate the recovery of funds for administrative fines and other insignificant amounts.

2. METHODOLOGY

The methodology of this comparative legal analysis is based both on the general scientific methodology of cognition of reality and on private scientific methods: historical, system-structural analysis, comparative legal analysis, analysis of judicial practice data. The study of procedural legislation, mediation, and legal advice, as well as several national sources and other normative acts, was carried out using methods of specialized research, logical and statistical analysis. In work, the authors relied on the results of research by Russian and Chinese theorists and practitioners in this and related fields of knowledge.

3. RESULTS

General characteristics and procedural regulations for attachment of the debtor's earnings in China and Russia

3.1 China

Unlike most countries that distinguish the enforcement proceedings into a separate and independent institution with carefully developed legislation, China has taken a different path by including the foundations of legislative regulation of enforcement proceedings in the Civil Procedure Code of the People's Republic of China (hereinafter, the CPC of the PRC). The procedure for the seizure of the debtor's property, the

measures of influence, and the powers of the executive bodies, as well as the detailed regulation of specific executive actions, are established by judicial clarifications of the Supreme People's Court of China.

Enforcement proceedings on court decisions that have entered into legal force are carried out by bailiffs of the people's courts of the first instance at the place of residence or location of the debtor's property. After receiving the documents in the form of a writ of execution, the bailiff is obliged to proceed to the execution of the order within fifteen days.

The imposition of attachment of the debtor's earnings or the seizure of a part of the debtor's income, as prescribed in the CPC of the PRC, is one of the three coercive measures in the practice of enforcement proceedings in China, along with the seizure of the debtor's property and the forced debiting of funds from his accounts in a bank, credit and other savings organizations. This method is used to satisfy the requirements of creditors by a bailiff at its discretion, based on the goal of a more rapid and efficient debt collection.

Following Article 243 of the CPC of the PRC, the bailiff, upon seizing part of the debtor's income, is obliged to leave the funds necessary for the debtor and his dependent family members to survive (Halatova S.A., 2014). Chinese law does not establish a specific amount or percentage of the income left to the debtor, nor does it provide a definition of the concept of income, which, in turn, gives greater freedom of action to the bailiff when seizing the debtor's income.

After the decision by the bailiff on the application of a partial or systematic seizure of the debtor's income, the people's court decides on the application of this enforcement measure. It issues notice on the assistance in the execution of the court ruling by all organizations, banks, and other credit and savings institutions. With these documents, the bailiff has the right to apply both to the organization where the debtor is employed and to financial institutions where the debtor receives income. For example, seize income from securities or payments coming from government agencies and organizations.

The People's Court has the right to suspend seizure of the debtor's income if the collector agrees to defer or change the payment of debt, motivated by the objections of third parties to whom the subject of execution concerns, for example, dependents on the debtor's maintenance, as well as for other circumstances that the court considers necessary to pause the execution. In the event of the death of the claimant, the people's court shall decide on the suspension of the arrest on the part of the debtor's income in order to await the succession of the deceased.

Termination of the systematic collection of a part of the debtor's income occurs in the following cases:

- Full repayment of debt under the executive document;
- Refusal of the creditor or the recoverer of their claims;
- Death of the debtor in the absence of inheritance;
- Death of a person receiving alimony payments from a debtor;
- Cancellation of the writ of execution or based on a decision of the people's court.

In the absence of income or the termination of its receipt, the people's court is authorized to terminate enforcement proceedings against the debtor altogether only if he is incapable of work and does not have a property that may be seized.

The absence of a single body for the enforcement of judicial acts has formed a unique system of forced seizure of the debtor's income in the framework of administrative enforcement proceedings. These enforcement proceedings are regulated by the Law on Administrative Punishments of 1996 (hereinafter, referred to as the Law) and apply to citizens of the PRC, legal entities, and any other organizations operating in the territory of the PRC.

Following the Law, the execution of decisions of administrative bodies is carried out by local state structures specifically created under these administrative bodies to collect fines, penalties, and other types of administrative punishment. In practice, these structures or, as they are also called, administrative agencies have enormous and often unlimited powers to enforce decisions and regulations of administrative institutions.

In the case of a decision on an administrative penalty not exceeding 20 yuan, more challenging to execute further than at the time this decision was made, or at the request of a party or parties, the bailiff officers, as well as the administrative authorities themselves, have the right to recover the fine on the spot. In practice, it

turns out that, using a similar right concerning legal entities and citizens engaged in entrepreneurial activity, administrative executives take fines at the place of the administrative offense.

Within the framework of administrative proceedings, the offender may petition the administrative authority that imposed the penalty to pay off the full amount of the fine by systematic payments from the offender's income (Section 52 of the Law). This right is usually widely used by entrepreneurs and legal entities with significant amounts of fines, for example, with severe environmental pollution. Citizen debtors rarely use this right, since the amount of fines, penalties, and other levies for administrative liability in the PRC for individuals is significantly lower than for legal entities.

The income recognized by the competent administrative authority as "illegal" or obtained with serious offenses and not subject to destruction per the applicable law may be forcibly seized by administrative executors and sent to the state treasury (Ermakova E.P, 2018). If this income is expressed in real estate or other valuable property, then this property must be placed and sold at public auction in the manner prescribed by relevant legislation.

Special mention should be made of alimony payments related to tax deductions by one person in favor of another in case of divorce in a mandatory judicial procedure. In the legislation of the PRC there is no designation of a specific amount or percentage of income payable by one of the parties to a broken marriage. The amount of alimony payments, as well as the alimony payer, is established during a divorce court hearing and amounts to 20-30% of the total income of a better-off party. These funds are withheld on a monthly basis, like income tax, during the calculation and payment of wages, and/or other income to an individual and are transferred to the former spouse.

3.2 The Russian Federation

In accordance with the Federal Law "On Bailiffs" and the Federal Law "On Enforcement Proceedings" of 2007, the bailiffs of the specialized Federal Service of Judicial Bailiffs of the Russian Federation (hereinafter - FSSP RF) are involved in the compulsory seizure of the income of a citizen-debtor as part of the execution of judicial acts and acts of other authorized state bodies and officials. The legislation allows the recoverer to address the writ of execution directly to the debtor's employer to recover part of the income to his address. However, in case of refusal or improper fulfillment of the requirements of the writ of execution, the recoverer will be forced to apply to the FSSP of the Russian Federation due to the presence of the last row of legal instruments to force employers to appropriate execution. For example, bailiffs can bring a legal entity and its officials for failure to fulfill the requirements of the writ of execution to administrative responsibility (part 3 of article 17.14 of the Code of Administrative Offenses of the Russian Federation).

Unlike most countries that give their bailiffs the right to choose measures of enforcement by the debtor of the decision of the courts and other state bodies, in Russia foreclosure on the wages and other income of the debtor-citizen is mandatory for bailiffs in the following cases: in the case of a direct indication in the writ of execution for the collection of regular payments, indicated in quantitative or percentage terms, as well as with the amount of collection not exceeding 10,000 rubles. The inability to satisfy the claims of creditors or collectors in full at the expense of the property or money of the debtor also obliges the bailiff to recover the income of the latter. In all these cases, the bailiff is required to foreclose on the income of the debtor, and not property.

Russian law defines in detail the concept of the debtor's income, which may be levied by bailiffs or a recoverer. Thus, Chapter 11 in the Federal Law "On Enforcement Proceedings" in its title "Foreclosure on the wages and other income of a debtor-citizen" refers to the norms of the Labor and Civil Codes. Under the Labor Code (Article 129), wages are understood as any income of a citizen paid to him by the employer as remuneration for labor, including payments of motivational, compensatory, or bonus nature. Under other income, the Civil Code of the Russian Federation (Article 136) establishes any income of a financial or material nature to a citizen from the use of a property.

A broad interpretation of the concept of "other income" allows the bailiff to recover the income received in the form of dividends on securities, the profit paid to the debtor as the owner of the company or organization, financial payment from the rental of real estate. Besides, in practice, bailiffs relate cash income to the other income of the debtor that is not related to his labor activity and property, for example, deductions and payments from copyright and patent rights, as well as scholarships, allowances, pensions, and alike.

Having accepted a writ of execution from the collector demanding execution to be enforced against the proceeds of a debtor-citizen for execution, the bailiff must, within three days, issue a decision to institute or refuse to institute enforcement proceedings on this writ of execution. The bailiff informs all interested parties

of the decision by sending a copy of the decision no later than the next day.

In the case of a decision to institute enforcement proceedings and the publication of the relevant decision, the bailiff, first of all, determines the place of work of the debtor-citizen and his other income. This is done by sending requests to various organizations, which may contain any information about the debtor, for example, the tax service, employment service, pension fund. For example, when submitting requests to banking organizations, the bailiff must receive an answer about the funds, accounts, and income of the debtor-citizen within seven calendar days from the date of application.

Bailiffs have the right to petition to any organization in order to ascertain the income of the debtor-citizen, including those organizations where the debtor works unofficially. Concealment of one's income and malicious evasion of debt by a debtor-citizen may serve as a pretext for the bailiff to bring the debtor not only to administrative but also to criminal liability. If the debtor does not have the income to fulfill the requirements of the writ of execution, the bailiff shall recover the property and money of the debtor in a general manner.

Having determined the place of work of the debtor-citizen or the place where he received other income, the bailiff sends a copy of the writ of execution, a decision on the initiation of enforcement proceedings, a decision on the collection of the enforcement fee and bank details for the transfer of the amounts to be collected to the employer or other organization that pays the income to the debtor citizen. Based on these documents, organizations are required to withhold and transfer the amounts specified in the writ of execution to the specified bank details within three calendar days from the date of payment of wages or other income to the debtor- citizen.

During the execution of the requirements of the writ of execution, the bailiff exercises control over the correctness of the deductions of the collected amounts by conducting checks of the relevant organization. When conducting such checks by the bailiffs of the FSSP of the Russian Federation in accordance with paragraph 16 of Art. 64 of the Federal Law "On Enforcement Proceedings," an organization or other person paying income to a debtor-citizen is required to provide the relevant accounting documents to the bailiffs to confirm the correctness of deductions and transfers.

The termination of proceedings for the recovery of wages or other income of a debtor-citizen shall be terminated by the employer or an authorized organization in the following cases:

- Fulfilling the requirements specified in the writ of execution in full;
- Change in the debtor citizens' place of work, study or termination of income;
- At the written request of the creditor or claimant;
- In connection with the termination, amendment, or cancellation of enforcement proceedings by order of the bailiff.

Upon the occurrence of one of the above grounds for the termination of enforcement proceedings, the organization shall return the writ of execution to the bailiff or recoverer with a note on the grounds for termination of the execution of the document and the amount recovered by the time of termination of the execution, if the execution was partial. In addition, it is this organization that pays wages or other income that is obliged to inform the Federal Social Insurance Service of the Russian Federation about a new place of work, study, receipt of benefits and/or pensions of a debtor- citizen.

One of the types of foreclosure on the part of the salary and other income of a citizen of the Russian Federation also includes the deduction by the employer or organization paying the income of a certain amount as alimony payments established by a judicial act or by agreement of the parties for the alimony payer. The procedure for collecting child support payments is established by Article 102 of the Federal Law "On Enforcement Proceedings" and consists of the following.

A person who claims to receive alimony payments, if there is a writ of execution, a court order or an agreement on the payment of alimony between the parties, has the right to personally contact the debtor's employer with these documents, which will significantly save time and speed up the start of receipt of alimony payments. Based on one of these documents and a free-form statement from the applicant indicating the payer, recoverer, and children, the employer's accounting department withholds and transfers the indicated amount of money monthly to the recipient no later than three days from the date of payment of wages or other income to the alimony payer.

The independent submission of documents on the collection of alimony from the debtor's income has several drawbacks in comparison with the transfer of governing documents to the territorial body of the Federal Tariff

Service for execution. Firstly, an individual does not have the authority to control the correctness of deductions and payments by the employer of the alimony payer. Secondly, when changing the place of work, the child support recipient will have to pick up and present the executive documents to the new place of work of the child support payer. Moreover, in the absence of income and official employment, the recipient of the alimony does not have any tools to influence the payer, which forces him to turn to the bailiffs.

The amendments made to the Federal Law "On Enforcement Proceedings" in 2007 significantly expanded the list of the debtor's income, which cannot be levied in any amount and under any circumstances. The legislation gives immunity from collecting more than 16 of various types of payments and benefits, protecting mainly social and compensatory funds: payments for the loss of the breadwinner, money paid for causing harm to health, monetary compensation in connection with caring for the disabled, maternity capital funds, and alike.

Due to the existence of a wide list of various types of social pensions, benefits, compensations and other cash payments to citizens in Russia, bailiffs, when determining the possibility of imposing a penalty on a certain type of income of a debtor-citizen, it is recommended to refer to the explanations of the Plenum of the Supreme Court of the Russian Federation on social income for which a penalty shall be imposed as an exception. For example, part of the funds can be withheld from unemployment benefits to satisfy the requirements of the writ of execution, and from compensation payments that have suffered as a result of industrial or radiation disasters, only for foreclosure in the framework of maintenance relations.

4. FINDINGS

A comparative legal analysis of the procedures for seizing the income of a debtor-citizen in China and Russia shows similar approaches of the two countries to using a debt collection tool for citizen's income in enforcement proceedings (Frolova E.E., 2018). Despite the differences in the structure of executive bodies, in Russia the FSSP of the Russian Federation with separate legislative regulation, and in China, the presence of independent bailiffs in the courts and administrative bodies in the absence of common legislation, it should be noted that both systems work efficiently and have one common goal - a strict performance by the debtor of his debt obligations.

The seizure of the debtor's income per se is complex, lengthy, and dependent on many factors enforcement tools in both countries. Problems with its use begin if the debtor regularly changes his place of work or works without formalization of labor relations (Dudin M.N., 2016). For example, in China, these are "illegal" taxi drivers, when it is impossible to determine how much the debtor earned, and in Russia, "gray" wages, when only a small part of earnings is officially paid to the debtor in order to reduce the employer's tax base (Dudin M.N., 2017).

An exciting experience for Russia may be the presence in the PRC of administrative bailiffs at each administrative body authorized to hold administrative responsibility. These administrative bailiffs significantly reduce the burden on bailiffs at the people's courts, speed up the enforcement process, and may foreclose on the debtor's income.

A significant obstacle to the introduction of a similar model of administrative bailiffs in Russia is the underdeveloped anti-corruption legislation. For such offenses, the PRC provides for severe punishment, so the administrative bailiffs do not even think about appropriating such insignificant amounts, and the system itself works efficiently and quickly.

The analysis in this article highlights the social protection of a debtor-citizen in Russia compared to the PRC when levying a portion of the citizen's income (Dudin M.N., 2017). In particular, the percentage of income that cannot be seized is indicated; a number of allowances, pensions, compensations are withdrawn from all types of enforcement proceedings; circumstances have been established in which it is possible to foreclose on a portion of the income.

At the same time, in China, these issues are referred to the competence of executive bailiffs, which gives them almost unlimited powers. In practice, the absence of detailed executive legislation with weak administrative and judicial supervision of bailiffs, in turn, provokes numerous abuses of office and official powers by bailiffs.

On the other hand, the Russian executive legislation does not regulate the procedure for foreclosing on the debtor income, which is expressed not in money, but, for example, in a commodity or a harvest. If in China such a question will be resolved by the bailiff based on his unlimited powers, then in Russia the bailiff, does not have any legal mechanisms to seize the material part of the income, nor legislatively secured powers, nor legislative, executive or judicial clarifications on the procedure in such cases.

Material income can play a significant role in the property status of a debtor-citizen; therefore, there is an urgent need to fill this gap in the legislation by establishing a procedure for the recovery and sale of such income, taking into account all costs (Artemyeva Ju.A., 2019). The assignment of real incomes to such incomes that cannot be seized will create additional opportunities for various manipulations with similar incomes for a debtor-citizen.

Ensuring practical legal proceedings is carried out at the expense of a particular order of enforcement proceedings, and this, in turn, guarantees the development of the economy (Burkaltseva, D.D., 2017).

Summing up, we can conclude that the seizure of a part of the income of the debtor-citizen is forceful with a constant or rarely changing source of income of the debtor. In both countries, this enforcement proceeding tool is a useful measure that is used as the main or complementary one when seizing property, taking into account the specifics of the laws of the countries (Rusakova E.P., 2018).

5. ACKNOWLEDGEMENT

The publication was financially supported by the Ministry of Education and Science of the Russian Federation (the Agreement number 02.a03.0008).

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