

# A Preliminary Study on the National Comparison of Civil Execution Relief System

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**Abstract:** The civil enforcement remedy system refers to the legal framework where parties or third parties, when their legitimate rights and interests are infringed upon by enforcement actions by judicial authorities, may legally request relevant agencies to take corrective, protective, and remedial measures. As a crucial component of enforcement mechanisms, this system aims to provide legal remedies for enforcement parties and third parties, balancing the efficiency and legitimacy values inherent in compulsory enforcement. Through analyzing the concept and characteristics of civil enforcement remedies, comparative studies of systems in Germany, Japan, and common law jurisdictions reveal distinctive design features in civil enforcement remedy frameworks across different countries and regions, offering valuable references for China to improve its enforcement remedy system.

**Keywords:** Civil enforcement remedy system; Substantive remedy; Procedural remedy

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The civil enforcement remedy system plays a vital role in protecting parties legitimate rights, standardizing enforcement procedures, and upholding judicial fairness. Through successive amendments to the Civil Procedure Law of the Peoples Republic of China, provisions on enforcement rights relief have been enhanced to better safeguard litigants entitlements, effectively address enforcement challenges, and accelerate the development of this remedial framework. The principle that "rights demand remedies" underscores the necessity of proactive protection measures when rights are violated or unenforceable. Civil enforcement procedures serve as essential mechanisms for realizing established rights, reflecting the evolution from private to public remedies while ensuring protection of applicants, judgment debtors, and stakeholders interests. This progression necessitates continuous refinement of enforcement remedies. In recent years, growing academic and practical attention to enforcement remedy systems has led to substantial scholarly discussions and extensive research on improving these mechanisms.

## 1. The Concept and Characteristics of Civil Enforcement Remedies

### (1) The concept of civil enforcement remedy system

Civil enforcement remedies constitute a comprehensive legal framework designed to address substantive and procedural rights violations caused by improper enforcement actions by civil enforcement authorities. This system compensates for legitimate interests of case parties or third parties through judicial means. The enforcement remedy mechanism has been continuously refined, with strengthened systems including execution relief, third-party objections, enforcement reconsideration, and participation distribution disputes. These increasingly sophisticated civil enforcement mechanisms effectively supervise and standardize enforcement practices while maintaining social stability, playing a vital role in safeguarding the lawful rights of litigants, stakeholders, and third parties.

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## **(2) The characteristics of the civil enforcement remedy system**

The civil enforcement remedy system embodies rich legal connotations and exhibits the following key characteristics. First, strict statutory requirements. As a public authority remedy mechanism, this system emphasizes rigorous legal compliance in procedural channels and activation processes. State agencies generally do not initiate such procedures *ex officio*; remedies must be initiated by aggrieved parties through proactive applications. Regarding eligibility, statutory provisions restrict initiation to parties with legal standing including litigants, interested parties, third parties, and other legally entitled individuals, typically requiring formal applications during enforcement proceedings. Second, remedial nature. The system's primary value lies in restoring rights infringed upon by enforcement actions. By granting citizens, legal entities, and organizations remedial rights, it aims to maximize compensation for damages caused by improper enforcement conduct. Third, entitlement-based nature. Remedial rights exist as inherent entitlements that only materialize when legitimate interests are violated. These rights do not automatically arise without unlawful acts or improper enforcement practices. They emerge exclusively when actual infringement occurs during enforcement, allowing claimants to seek restoration of original rights. Fourth, protective mandate. There is a risk of infringement on citizens' rights. To effectively constrain enforcement power and correct or curb illegal or improper enforcement actions, the state grants protected rights holders the right to truly rectify, remedy, and protect their rights when they are infringed upon by illegal acts.

## **(3) Constituent elements of civil enforcement relief**

The essential elements for civil enforcement remedies primarily include the following aspects: First, the enforcement authority must have carried out civil enforcement actions. Without initiating enforcement procedures, there can be no activation of remedial measures, as the prerequisite for remedy activation lies in the improper conduct by enforcement authorities. Second, enforcement actions must involve violations of legal provisions or improper interests. The civil enforcement remedy system activates when enforcement actions are manifestly improper or violate relevant laws. This mechanism safeguards substantive rights obtained by parties or third parties during enforcement proceedings, preventing abuse of compulsory enforcement powers by enforcement authorities. Third, remedial measures should be initiated when procedural or substantive rights of parties, interested parties, and third parties are infringed. During enforcement procedures, public authority institutions may exhibit tendencies toward excessive protection of certain interests while pursuing creditors' rights. When imbalances in protecting substantive or procedural rights of debtors or third parties lead to improper enforcement actions causing damages, necessary remedial measures should be immediately implemented. After granting corresponding rights to parties or third parties, enforcement remedies can effectively regulate the exercise of enforcement powers and standardize civil enforcement conduct. Fourth, any illegal or non-compliant...The causal relationship between the act and the damage result. The civil enforcement remedy system requires that there be a causal relationship between the enforcement act and the infringement result or loss suffered, and the enforcement authority shall bear relevant responsibility. The law enforcement agency shall not be held responsible if there is no causal relationship between the improper act of the law enforcement agency and the damage suffered by the right holder.

## **2. A Comparative Study of Civil Enforcement Relief Systems in Germany, Japan and Common Law Countries**

Civil enforcement remedies in civil law countries, particularly Germany and Japan, establish comprehensive systems that provide rights holders with full avenues for redress. These mechanisms prioritize safeguarding rights holders' fundamental entitlements to raise objections, present defenses, and initiate legal proceedings, thereby ensuring effective checks on power. The incorporation of civil enforcement frameworks from major civil law jurisdictions and the Taiwan region of China offers valuable insights for refining China's domestic legal system.

### **(1) German civil enforcement relief system**

German civil enforcement remedies encompass both procedural and substantive dimensions. Procedural remedies typically involve enforcement objections, while substantive remedies are usually addressed through actions like objection lawsuits. The German Civil Procedure Code specifies three primary approaches to enforcement remedies: filing applications, lodging objections, and raising protests. When movable property is seized through real estate seizure methods, parties may file protests. The main types of enforcement objections include challenges to enforcement categories and methods, objections to enforcement measures that harm debtors interests, and objections to enforcement procedures themselves.

Germany's substantive civil enforcement remedies include forms such as execution objection lawsuits and third-party objection lawsuits. Execution objection lawsuits typically encompass the following types: First, creditor-initiated execution clause actions. When conditional payment of claims requires enforcement, creditors can initiate execution clause actions against the court without needing notarized documents to enforce their rights against debtors. Second, execution objection lawsuits. Debtors may file objection lawsuits with the first-instance court to challenge creditors regarding judgment-ordered payment obligations. Third, execution clause objection lawsuits. Debtors contesting essential requirements of execution clauses may initiate litigation procedures with the first-instance court. Fourth, execution objection lawsuits by heirs. Inheritors of creditors who do not participate in litigation but object to judgments may raise defenses through execution objection lawsuits. Germany's substantive provisions for third-party objection lawsuits are relatively mature, typically including: First, third-party objection lawsuits against transfer prevention. Third parties claiming rights over enforcement targets intending to block rights transfers may initiate objection lawsuits. Second, third-party objection lawsuits regarding prohibited transfers. When laws explicitly prohibit property transfers under specific circumstances, third parties may challenge such prohibitions through. Third, the objection lawsuit filed by a junior heir. For enforcement actions that may violate legal provisions and hinder the protection of rights for junior heirs, such junior heirs may file an objection lawsuit with the enforcement court to protect their rights. Fourth, the objection lawsuit concerning jointly owned property between spouses. When enforcing a judgment against one spouse regarding jointly owned property, the other spouse may file an objection lawsuit with the enforcement court.<sup>[1]</sup>

### **(2) Japans civil enforcement remedy system**

As a civil law country, Japan has inherited and developed its own distinctive enforcement remedy system from traditional practices. The procedural remedies in Japan's enforcement framework include the following: First, enforcement appeals. This system stands as one of the most representative mechanisms in Japan's enforcement remedies. When enforcement execution authority and adjudicative power are exercised by the same entity, it may result in harm to the legitimate interests of civil enforcement parties or third parties. If a party raises an objection to an existing ruling in a disputed enforcement case, the law grants them or interested parties the right to file an appeal with the court. Second, enforcement objections. These arise when enforcement authorities engage in improper actions or delayed enforcement procedures. When parties or third parties discover circumstances that meet regulatory requirements and raise objections to protect their rights, this mechanism becomes applicable.

In Japan's civil enforcement remedies, the main substantive relief forms include: First, the action of objection to claims. A debtor may file an objection lawsuit requesting that a specific debt not be enforced if they dispute the existence or substance of the claimed rights. Second, third-party objection lawsuits. When a third party asserts property rights over subject matter in civil enforcement proceedings or seeks to prevent its transfer, they may file an objection lawsuit with the Peoples Court to exclude enforcement. Third, distribution objection lawsuits. Creditors may request changes to ownership ratios during distribution periods through this legal action when they disagree with other creditors share allocations and distribution amounts.<sup>[2]</sup>

### **(3) Civil enforcement remedies in common law countries such as England and the United States**

In common law jurisdictions such as the United Kingdom and the United States, the exercise of civil enforcement powers emphasizes adversarial principles and fairness.<sup>[3]</sup> As these powers are considered administrative authority, enforcement agencies are typically administrative bodies. When parties' rights are infringed, they may initiate general litigation procedures to hold administrative agencies accountable for contractual breaches or tortious acts. These common law systems employ mechanisms like third-party litigation and participation in proceedings, which enable interested parties to become litigants in advance. This proactive approach protects third-party rights by providing safeguards against potential harm caused by imperfect pre-litigation procedures. Third parties may then file tort actions against improper property enforcement by administrative agencies or enforcement personnel. For instance, English tort law allows claims for unlawful seizure or possession (Conversion) to be filed as trespassing claims. Third parties can also seek restitution through detinue (claim for wrongful delivery) or trover (claim for recovery of misappropriated property) as supplementary remedies to administrative law. With the development of common law systems in countries like the UK and the US, the system countries gradually recognize the characteristics of civil execution with the dual attributes of judicial power and administrative power, and have set up third-party claim property procedures to remedy the losses suffered by them due to improper execution.

## **3. Improvement of Chinas Civil Enforcement Remedy System**

### **(1) Analysis of civil enforcement relief in China**

Research on Chinas civil enforcement remedy system typically focuses on procedural and substantive objections to enforcement.<sup>[4]</sup> The procedural remedies in Chinas civil enforcement system include the following types: First, objections from parties and interested parties. In civil litigation procedures, if a party or interested party believes an enforcement action is illegal, they may submit a written application to the enforcement department requesting revocation or correction of the enforcement action. Second, third-party objections. When a third party raises a written objection regarding the subject of enforcement to the enforcement court, the enforcement authority shall review and rule on it. Third, distribution objection rights. Creditors or other right holders who have obtained enforcement instruments for monetary claims but have not applied for enforcement may object to the property distribution plan prepared by the enforcement department and request corrections. Fourth, enforcement reconsideration. If parties or interested parties disagree with the enforcement authority's ruling on objections, they may apply for reconsideration to the higher peoples court.

Substantive enforcement remedies are judicial actions taken to rectify improper enforcement practices that infringe upon the substantive rights of debtors or third parties, whether ongoing or potential. In Chinas civil enforcement framework, these remedies include three main types: (1) Third-party objection lawsuits. When third parties or enforcement participants challenge court judgments during enforcement proceedings, they may initiate supervisory procedures through trial oversight mechanisms. If the claims lack direct connection to the original judgments' rights and obligations, separate litigation can be pursued. (2) Distribution objection lawsuits. Creditors or debtors contesting distribution arrangements may sue the objector, with the defendant typically being either the creditor or the judgment debtor. (3) Enforcement authorization lawsuits. When third parties challenge enforcement targets and the court rules in their favor to suspend execution, the claimant may file an enforcement authorization lawsuit to request resumption of proceedings.

The enforcement remedy system constitutes a comprehensive framework that requires coordination with its overall structure.<sup>[5]</sup> While Chinas civil enforcement remedies demonstrate practical applicability in practice, they still exhibit deficiencies in substantive and procedural aspects. The absence of clear regulations regarding the eligibility of third-party petitioners to challenge enforcement actions, when handled by enforcement courts, has hindered

the effective implementation of remedial measures. Debtors may raise objections to unlawful enforcement actions, yet the lack of substantive provisions for debtor objection lawsuits in compulsory enforcement systems limits substantive rights protection. As a result, substantive rights infringements against debtors can only be addressed through procedural reviews, which creates certain disadvantages. Furthermore, there exists a phenomenon in Chinese civil litigation where parties exploit legally prescribed objection lawsuits to delay or evade enforcement. If such practices are not prohibited, they risk wasting judicial resources and potentially undermining the authority of the judiciary.

## **(2) Countermeasures for improving the civil enforcement remedy system in China**

The author puts forward the following suggestions for China's civil execution relief system, hoping to build a suitable civil execution relief system for economic and social rapid development.

1) Improve the review subjects and timelines for execution objections. As a legal right allowing claimants to challenge procedural violations by enforcement authorities, this mechanism should be optimized. To enhance efficiency, it is recommended that specialized teams handle procedural objections unrelated to substantive rights. Enforcement agencies should establish dedicated review divisions or functional units for such cases, typically conducting reviews through written submissions. Complex cases may require public hearings. Parties, interested parties, and non-parties raising objections regarding civil litigation enforcement actions must file their appeals within a reasonable period after becoming aware of or reasonably expected to have become aware of their rights being infringed.

2) Enhancing the debtor objection litigation system. Improper enforcement actions may directly impact or infringe upon debtors' substantive rights. Establishing a swift and efficient objection litigation mechanism helps promptly safeguard both substantive and procedural rights. To protect the substantive interests of debtors and third parties, when creditors apply to modify and add third parties as judgment debtors with enforcement department approval, legal provisions should refine procedures for debtors to file objections during enforcement proceedings regarding rulings to add judgment debtors. This ensures substantive remedy rights are protected when third parties are improperly designated as debtors.<sup>[6]</sup> Promoting continuous refinement of relevant regulations governing debtor objection litigation review, ensuring debtors can block enforcement through litigation when circumstances exist that eliminate or obstruct enforcement grounds.

3) Improve the third-party objection litigation system. Under China's Civil Procedure Law, third parties asserting substantive enforcement rights may file disputes with judicial authorities. This raises the question of whether such objections can trigger retrial applications challenging erroneous judgments. The author proposes establishing a rights protection framework centered on enforcement objections and direct third-party litigation. When property contested by third parties—particularly heirs—is determined not to belong to the judgment debtor, enforcement authorities should revoke execution actions.<sup>[7]</sup> In cases where ownership of specific assets remains uncertain, third-party objection procedures should be expedited with full evidentiary rights granted to litigants. Furthermore, creditor distribution objections should be refined through clarifying evidentiary rules for review, defining rights and obligations in third-party litigation, and optimizing substantive remedies for third-party claims regarding enforcement targets.

4) Improve the litigation system for malicious objections. To prevent adverse enforcement outcomes arising from such lawsuits, it is essential to clarify the statutory authority of enforcement departments and accelerate the allocation of adjudicative power, supervisory authority, and implementation rights. This will enhance their authoritative capacity to evaluate the legality and rationality of objections raised by parties.<sup>[8]</sup> To protect the legitimate rights of litigants and third parties, case filing procedures should specify required materials and relevant precautions. When courts accept objection lawsuits, they must implement safeguards like bond mechanisms before enforcing measures. For cases involving collusion between parties to infringe upon others' legal rights through

litigation, appropriate measures shall be taken according to law, including transferring cases to public security authorities for criminal prosecution in accordance with regulations on obstruction of official duties.

#### 4. Conclusions

The civil enforcement remedy system fundamentally provides the legal capacity to either initiate or seek external assistance when rights are infringed upon or face potential violations. Without this capacity, safeguarding rights would become an empty promise, while infringement acts could proceed unchecked. As an effective mechanism for protecting parties rights, the enforcement remedy system carries significant positive implications. Although China's civil enforcement remedy framework has been significantly refined, it still lags behind those of other countries in certain aspects. With the advancement of streamlined management, centralized asset seizure mechanisms, and the establishment of digital enforcement command centers, courts can now provide more efficient and accessible relief to litigants and third parties. However, it must be acknowledged that no systemic reform can be achieved overnight—it requires sustained dedication and persistent efforts. This article posits that through collaborative societal initiatives, the civil enforcement remedy system will gradually improve, effectively resolving operational challenges and ensuring better protection of legitimate rights for both litigants and third parties.

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