

Study on the System of the List of Defaulters

Zhou Fangyuan

Tianjin University of Commerce, Tianjin, China

Keywords: List of defaulters, Credibility, Rights protection, Punishment

Abstract: In order to solve the problem of “difficult enforcement”, a series of punitive and supervisory legal norms have been formulated in China's judicial practice at the present stage. Through the explanation of the background, source and connotation of the list of defaulters subject to enforcement, analyze the current situation and the limitations of the list of defaulters subject to enforcement. And link with relevant existing systems in China to promote implementation, and analyze the perfection and development of this system.

1. Introduction

As economic relations become more complicated and disputes are increasing, the total of legal documents to be executed will become larger and larger. This is not only a sign of the complexity of judicial work and an increase in workload, but also one of the manifestations of economic development. Statistics conducted by Supreme People's Court of P.R. China in 2013 show that from 2008 to 2012, in cases where the enforced person actually has property in courts across the country, more than 70% of the enforced person has escaped or evaded, the automatic performance is less than 30%. The principle of honesty and credibility was established when the “Civil Procedure Law” was revised, highlighting the importance of honesty and credibility today. The role of social credit will become stronger.

1.1 Source

The “Several Provisions of the Supreme People's Court on Disclosure of the List of Defaulters” (hereinafter referred to as the “Regulations”) adopted in July 2013 contains the expression “list of defaulters”, which stipulates a series of untrustworthy persons to be enforced. Issues related to the list of people, including inclusion conditions, subjects, and published content. In November of the same year, the Executive Bureau of Supreme People's Court of P.R. China and the Credit Reporting Center of the People's Bank of China signed a memorandum of cooperation. The two parties jointly clarified the operating procedures for including the list of defaulters into the credit investigation system, which provides the list of defaulters.

1.2 Connotation and Interpretation

The “list of defaulters” is a list of persons subject to enforcement who are found to be unqualified in terms of legal documents in the enforcement of effective legal documents. “The

system of the list of defaulters” is a system in which the person subject to enforcement is added to the list of defaulters due to certain conditions and after the ruling or determination of the authority, and is subject to credit punishment in accordance with the law for joining the list . The system of the list of defaulters is a disciplinary system that punishes the person to be enforced because it is difficult to implement the effective judgment at this stage to urge them to perform the effective judgment. Adding eligible persons to be enforced to the “list of dishonest persons to be enforced” makes these dishonest persons to be enforced feel urgency and pressure, and urges them to implement effective legal documents, and this will bring about the solution of enforcement problems.

2. Limitations

2.1 From Defaulters

There are different degrees of dishonesty, and it is not enough to classify the person who is enforced into dishonesty and not to be dishonest enough to show the degree of dishonesty of the person who is enforced. When relevant organizations and individuals inquire about the list of defaulters, they can only judge the degree of dishonesty of the untrustworthy persons subject to the record of the specific cases of untrustworthiness. In this way, there is no standard at all, it is very vague, and it depends on personal interpretation. Although the list of defaulters is set up to punish persons subject to enforcement, if there is no hierarchy, the severely defaulters will receive the same or similar treatment as those of less trustworthy persons subject to enforcement.

The execution of false litigation or false arbitration by the person subject to enforcement is reflected in the “Regulations.” However, the malicious application by the applicant for execution to add the execution subject to the list of untrustworthy persons subject to execution is another practical problem. The applicant for enforcement has fabricated some facts, causing the people's court to be misled and add the enforcer to the list of untrustworthy enforcers. This is not conducive to the interests of the person being enforced, and is not conducive to the credibility of the people's courts, and should be stopped.

As real society attaches great importance to personal information rights, the personal information rights of natural persons in the “Civil Code” and the “Personal Information Protection Law” that is being revised all reflect this. Supreme People’s Court of P.R. China unified practice of disclosing information on defaulters on the Internet cannot be said to provide conditions for the illegal collection, use, processing, and transmission of other people’s personal information. Under legal publication, subsequent illegal operations may be caused.

2.2 From the Executing Agency

There is no clear standard for the inclusion conditions, that is, the legislation is not complete enough. The conditions for inclusion are not clear enough and very general. Take Article 1 Paragraph 1 of the Regulations as an example, it is stipulated that the person who has the ability to perform but does not perform the effective legal document, there is no statutory standard for the ability to perform. The method for determining this amount is that the amount that should be performed is related to the person being executed. The ratio between the amount of property, and the calculation method of the daily expenses of the person subject to execution and the subject to be supported by him, are not clearly resolved.

Correspondingly, the boundaries of justification are not clear, there is no uniform standard, how to determine it is not clear, and there is a lack of justified judgment standards. The criteria of subjective judgments are different for each judge. Such judgments lack fairness, and even the same

judge's multiple judgments in different situations will have different standards. Therefore, the lack of such judgment standards is very unreasonable.

The punishment method of this system is mainly through credit punishment, and credit itself is an unspeakable standard. It is not like a system that restricts high consumption, for example, it is not allowed to take airplanes, soft sleepers on trains, and second-class cabins on ships; such regulations are very clear. Therefore, it is impossible to determine whether or not they have been punished.

In the system of the list of defaulters, the most direct manifestation of the punishment imposed by the list is the review of defaulters by financial institutions. For example, when loans or credit cards are handled, financial institutions refuse to apply for loans or credit cards because of their untrustworthiness. Punishment methods need to be improved to more specific situations through enumeration and generalization, so that they can be easily implemented in practice.

3. Improve

3.1 Conditions and Standards

Improve the conditions and standards for joining the list of defaulters, and conditions cannot be specified without standards. With these conditions, it is possible to distinguish whether the person to be executed is to be included in the list. For the vague conditions, a detailed explanation must be given; this also requires that each condition be clear and usable, and the explanation of some conditions can be further stipulated by referring to the standards set by the relevant legal documents.

3.2 Divide the Level

Those who have been added to the list of untrustworthy persons to be enforced are divided into levels of dishonesty, such as level 1, level 2, level 3, etc., and the degree of dishonesty is assigned a name from low to high. Corresponding disciplinary measures shall be formulated for different levels of defaulters; or the disciplinary measures may be similarly graded, corresponding to the level of untrustworthiness one-to-one. Such a hierarchical list of defaulters will be more scientific.

3.3 The Way of Disclosure

The method of disclosure should be one that can be updated at any time to minimize the impact from timeliness. If you want to use newspapers, publications, and other media that cannot be updated directly, you must find a method that is sufficient to achieve the update effect. The use of new media is more advantageous than old media, because it can be deleted, updated, and modified at any time, which is more in line with the requirements of information timeliness.

4. Results

Greater public awareness will facilitate the implementation of the system of the list of defaulters and increase the pressure on the defaulters from society, which can also be turned into a driving force for the defaulters to continue to carry out the work. The development of the list system of defaulters is inevitable in practice, which constantly seeks perfects them. It is a system that promotes the development of today's society, a favorable weapon to solve the problem of civil execution, and a manifestation of social credit power in disputes.

References

- [1] Li Chang-chao(2017). *Problems and Countermeasures in the Implementation of the System of the Dishonest Person List*. *Journal of Political Science and Law*, vol.33 , no.02, pp: 28-35.
- [2] Bai Xiaofeng(2017). *Annual Observation Report on Civil Execution in China (2016)*. *Contemporary Law Review*, vol.31, no.03, pp:145-160.
- [3] Meng Lingwei(2016). *An analysis of the system of publishing the list of persons who have failed to trust*. *Legality Vision*, vol.32, no.2, pp: 181-182.
- [4] Shen Jing, Tian Qiang, Du Yu-yong(2016). *Statistical Analysis on the Issue of Dishonest Obligor*. *Hebei Law Science*, vol.34 , no.05, pp: 188-198.
- [5] Tang Li(2015). *Procedural mechanism for the realization of judicial justice- focus on the protection of the parties' right to litigate*. *Modern Law Science*, vol.37, no.04, pp:41-55.