

Several perspectives on parties with relevant rights and obligations in Civil Enforcement Proceedings

Một số ý kiến về người có quyền lợi nghĩa vụ liên quan trong thi hành án dân sự

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Abstract: In civil enforcement proceedings, individuals with related rights and obligations are significant entities, frequently appearing alongside the parties subject to enforcement and those obligated to enforce. However, the approach to this subject matter is still not rational, leading to numerous overlapping and conflicting regulations that require further amendments and supplements for consistency. This article will present three main topics: (i) current legal provisions regarding individuals with related rights and obligations in civil enforcement proceedings; (ii) some practical challenges in civil enforcement proceedings regarding the regulation of individuals with related rights and obligations; (iii) proposing some solutions to amend and supplement the provisions regarding individuals with related rights and obligations in civil enforcement proceedings to contribute to enhancing the effectiveness of civil enforcement activities in the future.

Keywords: *Civil enforcement proceedings; parties with relevant rights and obligations.*

Tóm tắt: Trong thi hành án dân sự, người có quyền lợi nghĩa vụ liên quan là chủ thể quan trọng, thường xuyên xuất hiện bên cạnh người được thi hành án và người phải thi hành án. Tuy vậy, cách tiếp cận về đối tượng này còn chưa hợp lý, dẫn đến nhiều quy định chồng chéo, mâu thuẫn, cần phải tiếp tục chỉnh sửa, bổ sung cho thống nhất. Bài viết này sẽ trình bày 3 nội dung chính: (i) các quy định pháp luật hiện hành về người có quyền lợi và nghĩa vụ liên quan trong thi hành án dân sự; (ii) một số vướng mắc trong thực tiễn thi hành án dân sự về quy định người có quyền và nghĩa vụ liên quan; (iii) đề xuất một số giải pháp chỉnh sửa, bổ sung các quy định về người có quyền lợi và nghĩa vụ liên quan trong thi hành án dân sự nhằm góp phần nâng cao hiệu quả công tác thi hành án dân sự trong thời gian tới.

Từ khóa: *Người có quyền lợi nghĩa vụ liên quan; Thi hành án dân sự.*

1. Current Provisions Regarding Parties with Relevant Rights and Obligations in Civil Enforcement Proceedings

The Civil Enforcement Law stipulates that individuals, agencies, and organizations have rights and obligations related directly to enforcing the rights and obligations of the parties involved. This concept is defined in Article 4, Clause 3 of the 2008 Civil Enforcement Law, subsequently retained in Article 4, Clause 3 of the amended and supplemented 2014

Civil Enforcement Law (hereinafter referred to as the Civil Enforcement Law). Accordingly, we can identify three groups of individuals with rights and obligations: individuals, organizations, and authorities.

Firstly, individuals with rights and obligations are individuals

Provisions regarding individuals are regulated from Article 16 to Article 73 of Chapter III of the Civil Code 2015. When determining individuals with rights and obligations in civil enforcement, it is

essential to note the legal capacity and civil conduct capacity of individuals (corresponding provisions in Article 16 and Article 19 of the Civil Code 2015). Civil conduct capacity refers to an individual's ability to establish and perform civil rights and obligations through their actions. Article 20 of the Civil Code 2015 defines adults as individuals aged 18 and above with full civil conduct capacity, except in cases of incapacitation (Article 22), cognitive impairment (Article 23), and restricted civil conduct capacity (Article 24). Article 21 of the Civil Code 2015 defines minors as individuals under eighteen years of age. Regarding legal capacity, every individual has it upon birth and loses it only upon death or declaration of death [1], indicating the state's recognition of an individual's civil rights and obligations.

Secondly, individuals with rights and obligations are organizations

The Civil Enforcement Law does not provide a specific definition of organizations but merely mentions it as a legal term in the Definitions section (Article 3). Similarly, although not explicitly defined, the Civil Code 2015 distinguishes various types of organizations with different characteristics, structures, and legal statuses (from Article 74 to Article 96). An organization is "A collection of people organized, acting for common interests, towards a common purpose" [2]. According to the Civil Code 2015, organizations include legal and non-legal entities. An organization is recognized as legal when it meets specific conditions [3].

Depending on the characteristics and legal status of each type of individual with rights and obligations, during the enforcement process, enforcement officers must study various legal fields to ensure the correct implementation of

judgments, decisions, and maximum protection of the rights and obligations of the parties involved and individuals with related rights and responsibilities.

Thirdly, individuals with related rights and obligations include authorities.

Similar to the concept of "organization," civil enforcement law does not explicitly define the term "authorities" as the entity with related rights and obligations in the process of executing judgments. However, practical civil enforcement work indicates [4] that the term "authorities" here is broadly understood as referenced in the Civil Code, which may include state management authorities, state bodies, and state administrative authorities (Articles 97, 99, and 100 of the Civil Code 2015).

In contrast to the provisions of the Civil Enforcement Law (wherein parties involved include only those subject to enforcement and those obligated to enforce without including those with related rights and obligations), the Civil Procedure Code 2015 stipulates that parties in civil matters not only include plaintiffs, defendants, and those petitioning for civil resolution but also encompass individuals with related rights and obligations [5].

Compared with the provisions of the Civil Procedure Code 2004, the Civil Procedure Code 2015 not only inherits the concept of individuals with related rights and obligations in civil cases but also supplements the concept of individuals with related rights and obligations in civil matters. Accordingly, individuals with related rights and obligations in civil matters are those who, though not requesting civil resolution, have their rights and obligations affected by such resolutions; thus, they are entitled to propose themselves or be proposed by the parties involved in civil matters and accepted by the court to participate in the proceedings as individuals with related

rights and obligations. In cases where the resolution of civil matters affects the rights and obligations of an individual without anyone proposing their involvement as an individual with related rights and obligations, the court must include them in the proceedings as individuals with related rights and obligations in civil matters (Article 6, Article 68 of the Civil Procedure Code 2015).

The rights and obligations of individuals with related rights and obligations in civil enforcement are relatively comprehensively regulated in the Civil Enforcement Law and related implementation guidelines.

Specifically, concerning the rights and obligations of individuals with related rights and obligations, they are stipulated in Article 7b of the Civil Enforcement Law, including:

Firstly, the right to be informed and participate in the implementation of security measures and coercive measures in the enforcement process related to themselves. Article 39 of the Civil Enforcement Law specifies that decisions on enforcement, summons, and other documents related to enforcement must be notified to the parties involved, as well as individuals with related rights and obligations, so they can exercise their rights and obligations as stated in the document. Accordingly, individuals with related rights and obligations have the right to be informed about civil enforcement through various means: directly, publicly posted, or announced through mass media. Notification must be made within three working days from the issuance date of the document, except in cases where it is necessary to prevent the parties from fleeing, damaging property, or evading enforcement [6].

Individuals with related rights and obligations also have the right to receive notification of civil enforcement via

telecommunications, fax, email, or other means. Direct notification can be made in the form of direct communication unless it impedes the civil enforcement authority. They also have the right to refuse to receive notification of civil enforcement. The notification will be documented, witnessed, and deemed valid in such cases. In the absence of individuals with related rights and obligations, notification can be made to their chosen representatives [7].

Secondly, the right to request the court to determine and divide ownership rights and use of property, ask the court to explain unclear points, correct spelling mistakes or erroneous data, and file civil lawsuits to protect their legal rights and interests in cases of disputes regarding property related to enforcement. Similarly to parties subject to enforcement, those subject to enforcement, and individuals with related rights and obligations also have the right to request the court to determine and divide ownership rights, and use of property; ask the court to explain unclear points, correct spelling mistakes or erroneous data; file civil lawsuits to protect their legal rights and interests in cases of disputes regarding property related to enforcement.

Thirdly, the right to lodge complaints and denunciations about enforcement. The right to lodge complaints and denunciations of individuals with related rights and obligations is specifically regulated in the Law on Complaints 2011, the Law on Denunciation 2018, and the Civil Enforcement Law (Article 140, Article 154). Accordingly, individuals with related rights and obligations have the right to complain about decisions, actions of heads of civil enforcement agencies, and enforcement officers if they believe such decisions violate the law or infringe upon their legal rights and interests.

Fourthly, individuals with related rights and obligations have an obligation to comply with decisions strictly and the requests of enforcement officers in the enforcement process. According to Article 2, Article 165 of the Civil Enforcement Law, organizations, individuals, whether legal entities or not, failing to enforce judgments may be subject to administrative penalties depending on the nature and extent of the violation. If damages are caused, compensation must be provided. Additionally, individuals may also face disciplinary actions or criminal liability.

Fifthly, individuals with related rights and obligations have an obligation to notify the civil enforcement authority of any changes in address or residence. Article 40, Paragraph 3 of the Civil Enforcement Law stipulates that if the recipient of notification has moved to a new address, they must inform the authority of the new address. Therefore, when changing addresses, individuals with related rights and obligations have the duty to notify the civil enforcement authority timely.

Furthermore, the rights and obligations of individuals with related rights and obligations are also regulated in Article 21, Subpoint d of Article 54, Subpoint 4 of Article 58, Subpoint 1 of Article 88, Subpoint 1 of Article 140, and Subpoint 1 of Article 145 of the Civil Enforcement Law.

2. Challenges in the practical application of certain legal provisions regarding individuals with related rights and obligations in the enforcement of civil judgments.

Although the Civil Enforcement Law has numerous provisions concerning individuals with related rights and obligations, practical enforcement encounters several challenges:

- *Regarding the right to negotiate the enforcement of judgments concerning*

issues related to the rights and interests of individuals with related rights and obligations.

Article 6 of the Civil Enforcement Law only stipulates that "parties" have the right to negotiate the enforcement of judgments. According to Article 3(1) of the Civil Enforcement Law, "parties include individuals subject to enforcement and individuals required to enforce judgments." This implies that only individuals subject to enforcement and individuals required to enforce judgments have the right to negotiate the enforcement of judgments. However, point c of Article 7(1) of the Civil Enforcement Law specifies that individuals subject to enforcement have the right to negotiate with individuals with related rights and obligations regarding the timing, location, method, and content of enforcement and point a of Article 7a(1) of the Civil Enforcement Law also stipulates that individuals required to enforce judgments have the right to negotiate with individuals with related rights and obligations regarding the timing, location, method, content of enforcement. Therefore, there is a contradiction between the provisions of Article 6 and Articles 7 and 7a of the Civil Enforcement Law regarding the subjects who have the right to negotiate the enforcement of judgments.

Furthermore, according to Article 98(1) of the Civil Enforcement Law, the parties involved in negotiations to determine the value of property or agree on the selection of appraisal organizations only include individuals subject to enforcement and individuals required to enforce judgments. However, in cases involving the handling of collateral property of guarantors (identified as individuals with related rights and obligations due to being the owners of the collateral), if only the parties subject to enforcement are stipulated to have

negotiation rights, it will not ensure the rights and interests of individuals with related rights and obligations when enforcement authorities are handling their property.

- Regarding the right to redeem property of individuals with related rights and obligations

When enforcing judgments involving financial institutions, according to Article 101(5) of the Civil Enforcement Law, individuals with related rights and obligations do not have the right to pay money to redeem property they used as collateral for loans. However, in practice, civil enforcement authorities often allow individuals with related rights and obligations who have property serving as collateral for individuals required to enforce judgments (borrowers) to negotiate payment to redeem the property at the starting price or the price announced at the time of auction. This approach facilitates swift civil enforcement proceedings, saving time and money for auction activities. Moreover, it can address difficulties such as failed auctions, the need for multiple price reductions, or complications in transferring ownership rights to the winning bidder.

- Regarding the handling of jointly owned property of individuals with related rights and obligations for enforcement

In cases where the property to be enforced is jointly owned by individuals required to enforce judgments and others (co-owners), the co-owners of that property are identified as individuals with related rights and obligations. According to the provisions of the Civil Enforcement Law, they have the following rights:

In cases where the property subject to enforcement is jointly owned but the ownership rights or land use rights of the individuals required to enforce judgments have not been determined, according to Article 74 of the Civil Enforcement Law

2008 (amended and supplemented in 2014), individuals with related rights and obligations are considered co-owners of the property and individuals required to enforce judgments have the right to negotiate the division of the jointly owned property or request the court to resolve it through civil proceedings.

In cases where the property seized for enforcement belongs to co-owners, and the jointly owned property cannot be divided or dividing it would significantly reduce its value, individuals with related rights and obligations, as co-owners of the property, have the right to receive payment for the value of their portion of the property.

Furthermore, co-owners, as individuals with related rights and obligations, have a significant right recognized in the Civil Code 2015, which is the right of first refusal when jointly owned property is auctioned for enforcement, as follows:

According to Article 2(7) of Joint Circular No. 11/2016/TTLT-BTP-TANDTC-VKSNDTC dated August 1, 2016, within a period of 5 working days from the date of receiving the appraisal results, the Enforcement Officer notifies co-owners of the right of first refusal to purchase the portion of the property owned by the individual required to enforce judgments.

Moreover, Article 3 of Article 74 of the Civil Enforcement Law stipulates: Before the first auction of jointly owned property, co-owners have the right of first refusal to purchase the portion of the property owned by the individual required to enforce judgments at the price determined within a period of 3 months for real estate or one month for movable property. For subsequent auctions, the deadline is 15 days from the valid notification date. If co-owners do not purchase the property within the first refusal period, the property will be

auctioned according to the provisions of Article 101 of the Civil Enforcement Law.

It can be said that the provision regarding the right of first refusal to purchase jointly owned property by co-owners in Article 3 of Article 74 of the Civil Enforcement Law basically inherits the provisions of the Civil Code on the determination of rights to jointly owned property (Article 218(3) of the Civil Code 2015). However, maintaining the first refusal period of 3 months for real estate and one month for movable property from the valid notification date (in addition, further specifying for subsequent auctions the deadline is 15 days from the valid notification date) contradicts the provisions of the Law on Auction of Property 2016, where a minimum auction session requires 30 - 45 days. This renders the first refusal period too long, consuming considerable time and procedures for the enforcement process.

- On the legal status of individuals with related rights and obligations during the civil enforcement phase

As previously discussed, individuals with related rights and obligations play a crucial role in civil enforcement proceedings, appearing frequently throughout the execution process. However, there are still uncertainties and shortcomings regarding the determination of the legal status of these entities in practice.

Firstly, the identification of individuals with related rights and obligations in judgments and court decisions, and individuals with related rights and obligations during civil enforcement, presents challenges. Some civil enforcement authorities base their identification of individuals with related rights and obligations on the judgment or decision of the court. Thus, there may be inconsistencies between individuals with related rights and obligations in civil

litigation and those in civil enforcement. The issue lies in accurately determining which entity should be considered as having related rights and obligations. Failure to do so may result in complaints against the enforcement outcome, with the rights of involved parties not adequately safeguarded according to the court's judgment or decision. In practice, there have been instances where courts failed to identify individuals with related rights and obligations in judgments or decisions, only for them to emerge during the enforcement phase. This unexpected occurrence complicates the enforcement process and may even lead to the annulment of the previously pronounced judgment or decision for retrial.

Next, the status of parties involved in enforcement differs from that in civil procedure law. Unlike the 2004 Civil Enforcement Ordinance, the Civil Enforcement Law stipulates that parties only include individuals subject to enforcement and individuals required to enforce judgments, excluding those with related rights and obligations. Is it justifiable to not recognize individuals with related rights and obligations as parties in civil enforcement? Despite being subject to various legal rights and obligations, indicating their significant position alongside individuals subject to enforcement and individuals required to enforce judgments, as evidenced by Articles 7, 7a, and 7b.

Lastly, are individuals with related rights and obligations and "third parties" in civil enforcement the same? If not, how do these two entities differ? Currently, the Civil Enforcement Law contains numerous provisions referring to "third parties." For example, "third parties holding documents to be delivered or returned" (Article 116 of the Civil Enforcement Law); "third parties holding money of individuals required to enforce judgments" (Article 81 of the Civil

Enforcement Law); "third parties responsible for enforcement costs" (Article 6 of Circular No. 200/2016/TT-BTC dated November 9, 2016, by the Ministry of Finance); and many other provisions such as Article 54(4), Article 66(2), Article 71(3), Article 73(6), Article 91, Article 105, Article 107(1), Article 116(1), Article 135(3), etc. Many provisions mention "third parties" without specifically stating individuals with related rights and obligations. However, in practice, the majority of cases involving these provisions identify individuals with related rights and obligations when applying them in civil enforcement proceedings.

3. Proposal to amend and supplement certain legal provisions regarding individuals with related rights and obligations in civil enforcement proceedings.

Firstly, it is necessary to consider supplementing provisions regarding the rights of individuals with related rights and obligations concerning issues directly related to their rights and obligations. Specifically:

- Supplementing provisions in Article 7b regarding the right to negotiate the enforcement of judgments of individuals with related rights and obligations in cases where the enforcement directly affects their rights and obligations.

- Supplementing provisions for individuals with related rights and obligations regarding seized assets to have the right to negotiate the price and choose the appraisal organization (including agreeing to choose an auction organization for asset auctions as stipulated in Article 101(2) of the Civil Enforcement Law) to ensure their rights.

- Supplementing legal provisions for expediting the priority purchase period for common property; at the same time, only stipulating the priority purchase rights at the first sale of common property

to shorten the time for organizing enforcement and enhance the effectiveness of attachment and handling of common property of individuals subject to enforcement in practice.

- Adding the category of individuals with related rights and obligations to the provisions of Article 101(5) of the Civil Enforcement Law in cases where individuals with related rights and obligations are guarantors for individuals subject to enforcement.

Secondly, the civil enforcement law needs to clarify the legal status of individuals with related rights and obligations during the civil enforcement phase, specifically:

- Identifying individuals with related rights and obligations as parties in civil enforcement. From the analyses above, it can be seen that individuals with related rights and obligations identified in the effective judgment of the court do not always correspond to individuals with related rights and obligations during the enforcement phase of that judgment. Therefore, considering individuals with related rights and obligations as parties will place these entities in the correct legal position, ensuring their legitimate rights as well as those of other parties, and facilitating the application of the law in enforcement proceedings. For example, *if individuals with related rights and obligations identified in the judgment (which determines their entitlement) submit a request consistent with the content of the right they are entitled, they become individuals subject to enforcement, thus being allowed to exercise the rights stipulated in Article 7 of the Civil Enforcement Law (regarding the rights of individuals subject to enforcement). If the enforcement authority considers that because the judgment identifies them as individuals with related rights and obligations, they should be based on Article 7b of the Civil*

Enforcement Law (regarding the rights of individuals with related rights and obligations), claiming that the law does not allow them the right to request civil enforcement to refuse jurisdiction is inaccurate.

- Distinguishing between individuals with related rights and obligations and "third parties" in civil enforcement. The Civil Enforcement Law needs to provide specific explanations of the concept of "third parties." Typically, individuals with related rights and obligations are easily identifiable based on the judgment or decision of the court or the rights and obligations relationship with the parties involved in enforcement. Therefore, any provisions applicable to individuals with related rights and obligations need to be clearly stated to avoid vague provisions as "third parties." This helps ensure the legitimate rights of individuals with related rights and obligations during enforcement and harmonizes legal concepts in the Civil Enforcement Law. For example, *when individuals with related rights and obligations identified in the judgment act as third parties using their property as collateral or guarantee to secure certain obligations (loan amounts, debt repayments, etc.), but during the enforcement phase, if the obligated party cannot fulfil the repayment obligation, the collateral property must be dealt with, they then become individuals subject to enforcement, hence being allowed to exercise the rights stipulated in Article 7a of the Civil Enforcement Law (regarding the rights of individuals subject to enforcement).*

4. Conclusion

The process of organizing enforcement is considered the final stage to "actualize" judgments and decisions. It is highly necessary to clearly define and supplement legal provisions regarding individuals with related rights and

obligations during the civil enforcement phase in particular and to improve the civil enforcement law in general. Therefore, the author hopes that in the future, this issue will continue to be researched and supplemented to contribute to enhancing the effectiveness of civil enforcement proceedings and ensuring the implementation of the rights and obligations of parties involved in enforcement and related parties in practice.

References

- [1] Clause 1, Article 71, the Civil Code 2015
- [2] Hoang Phe, "Vietnamese Dictionary", Publishing House of Da Nang. 2008 (p.1.249).
- [3] Clause 1, Article 74, the Civil Code 2015.
- [4] Hoang Thi Thanh Hoa, Nguyen Van Nghia, "Identifying Individuals with Related Rights and Obligations in Civil Enforcement - Practices and Recommendations", Journal of Democracy and Law. 2021 (Online: <https://vpluatsutranluat.vn/phap-ly/xac-dinh-nguoi-co-quyen-loi-nghia-vu-lien-quan-trong-thi-hanh-andan-su-mot-so-van-de-ly-luan-va-thuc-tien>).
- [5] Clause 1, Article 68, the Civil Procedure Code 2015.
- [6] Article 38 of the Civil Enforcement Law
- [7] Clause 7, Article 1 of Decree 33/2020/ND-CP amending and supplementing some articles of Decree No. 62/2015/ND-CP dated July 18, 2015 of the Government detailing the implementation of some provisions of the Civil Enforcement Law

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