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On the Judicial Determination of "Having the Ability to Enforce but Refusing to Enforce" in the Crime of Refusing to Enforce Judgments or Orders

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Abstract. As the ultimate safeguard to solve the problem of enforcement difficulties in China, the crime of refusing to enforce judgments or orders is crucial for maintaining judicial order and protecting the rights and interests of parties. However, in judicial practice, the criteria for determining "having the ability to enforce but refusing to enforce" are vague, and there are differences in judicial decisions among different courts, which makes it difficult for the crime of refusing to enforce judgments or orders to exert its due effect. The judicial determination dilemmas of "having the ability to enforce but refusing to enforce" are mainly reflected in the formalization of the determination of "having the ability to enforce", the differentiation of the determination of "refusing to enforce" and the controversy over the determination of enforcement time. The main reasons lie in the differences in the definition of the legal interest protected by the crime of refusing to enforce judgments or orders, and the deviation in the logical determination relationship between "having the ability to enforce but refusing to enforce". Therefore, it is urgent to clarify that the legal interest protected by the crime of refusing to enforce judgments or orders is a complex legal interest, to sort out the progressive logical determination relationship between "having the ability to enforce" and "refusing to enforce", and to make normative judgments on "having the ability to enforce" and "refusing to enforce".

Keywords: the crime of refusing to enforce judgments or orders, having the ability to enforce, refusing to enforce, enforcement time

1. Introduction

Implementing effective judgments and rulings is the "last mile" to realize judicial fairness and justice, which is related to judicial authority, credibility and the legitimate rights and interests of parties. However, the problem of "difficulty in enforcement" has always been a pain point in China's judicial practice. In July 2019, the Central Committee for Comprehensive Law-Based Governance proposed to "increase the crackdown on illegal and criminal acts such as refusing to enforce effective judgments and rulings" [1], and simultaneously build a "trinity" guarantee system, which provided clear policy guidance for solving the problem of difficulty in enforcement. In the Recommendations of the Central Committee of the Communist Party of China on Formulating the

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15th Five-Year Plan for National Economic and Social Development adopted in November 2025, an important arrangement was also made to "improve the national enforcement system and effectively solve the problem of difficulty in enforcement", which further demonstrated the country's firm determination to solve the problem of difficulty in enforcement. At the same time, the Supreme People's Court and the Supreme People's Procuratorate issued the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Refusing to Enforce Judgments or Orders (hereinafter referred to as the Interpretation) on December 1, 2024, which further refined the content and time points of acts of refusing to enforce in the crime of refusing to enforce judgments or orders, providing an important basis for unifying the handling standards of the crime of refusing to enforce judgments or orders in judicial practice.

However, as the core element of the constituent elements of the crime of refusing to enforce judgments or orders, there are still many controversies about the judicial determination of "having the ability to enforce but refusing to enforce". On the whole, the controversies between the theoretical and practical circles on "having the ability to enforce but refusing to enforce" mainly focus on two aspects: first, the starting point of the time of the crime of refusing to enforce judgments or orders has not been clarified. Although the effective judgment theory [2] is adopted in academic circles and judicial practice, this standard is difficult to adapt to all cases in practice. In response to this, some scholars have proposed adopting the effective judgment theory as the principle, combined with multiple standards such as the pre-litigation theory and the litigation initiation theory [3] for case-by-case judgment. Second, the formalization of the determination of "having the ability to enforce" and the differentiation of the determination of "refusing to enforce". In the determination of "having the ability to enforce", there are great differences in the definition of the scope of determination of enforcement ability in property cases. In the determination of "refusing to enforce", although the Interpretation details various situations of "refusing to enforce" by way of enumeration, it is still difficult to fully cover the complex situations in practice. In addition, when litigation debts and non-litigation debts exist at the same time, how to determine their priority has also become an urgent problem to be solved.

In summary, this paper intends to first explore the judicial determination dilemmas of "having the ability to enforce but refusing to enforce", then deeply analyze the causes of these judicial determination dilemmas, and finally put forward the improvement paths for the judicial determination of "having the ability to enforce but refusing to enforce", in order to help clarify the judicial determination standards of the crime of refusing to enforce judgments or orders.

2. The judicial determination dilemmas of "having the ability to enforce but refusing to enforce"

At present, the judicial determination dilemmas of "having the ability to enforce but refusing to enforce" are mainly reflected in two aspects: disputes over the determination of enforcement time and confusion over the criteria for determining "having the ability to enforce" and "refusing to enforce".

2.1. Disputes over the determination time of "having the ability to enforce but refusing to enforce"

Regarding the starting point of the enforcement time in "having the ability to enforce but refusing to enforce", there are mainly five viewpoints in the academic circle at present, namely, before the start

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of litigation, after the start of litigation, at the time of judgment announcement, at the time of judgment taking effect, and at the time of enforcement. However, the above viewpoints all have limitations in the face of practical situations. The pre-litigation theory and the litigation initiation theory advocate confirming the defendant's enforceable property when the court has not yet tried the case and the rights and obligations of the parties have not yet been determined, which excessively interferes with the defendant's freedom to dispose of property and is unreasonable. The judgment announcement theory cannot deal with the situation where the person subject to enforcement appeals against the first-instance judgment. At this time, the judgment has not yet taken effect, so it should not be determined that the person subject to enforcement "has the ability to enforce but refuses to enforce". The enforcement theory gives the person subject to enforcement more room to evade enforcement, enabling them to transfer property in advance before enforcement, hindering the realization of the judgment and damaging judicial authority and the interests of creditors.

It is not difficult to find that most of the academic and practical circles currently support the effective judgment theory as the starting point for determining enforcement ability [2]. For example, in the ruling reasons of Guiding Case No. 71 [1], the court discussed the legitimacy of the effective judgment theory from three aspects: the original legislative intention, consistency with the Civil Procedure Law and its judicial interpretations, and compliance with the legislative perspective. That is to say, it is impossible to confirm whether the person subject to enforcement constitutes the crime of refusing to enforce judgments or orders before the legal document takes effect. At this time, the person subject to enforcement has the freedom to dispose of their own property. If the enforcement ability starts to be calculated only after entering the enforcement procedure, the person subject to enforcement often hinders the enforcement of the judgment and ruling by transferring property, damaging the interests of creditors.

However, the effective judgment theory cannot be adapted to the actual situation in judicial practice. In practice, the person subject to enforcement often starts to transfer property during the litigation process. For example, in a typical case released by the Intermediate People's Court of Anshan City, Liaoning Province [2], the defendant withdrew his deposit from the bank the day after the incident. The effective judgment theory is difficult to restrict such malicious acts that hinder the enforcement of the judgment. The court held that "as long as the act of transferring, concealing property and other acts continue until after the civil judgment takes effect, and the circumstances are serious, it can constitute the crime of refusing to enforce judgments or orders". In this case, the court determined that the circumstances were serious through the defendant's subjective malice and subsequent acts of refusing to enforce, and pointed out that the defendant's state of concealing property continued until the judgment took effect, advancing the determination of enforcement time, thus determining that the defendant constituted the crime of refusing to enforce judgments or orders. This has actually exceeded the "effective judgment theory".

It is worth noting that Article 6 of the Interpretation adds a new provision: "If a person, in order to evade obligations, conceals, transfers property and other acts after the start of litigation but before the judgment or ruling takes effect, and if the facts are verified after the judgment or ruling takes effect, and he refuses to enforce when required to do so, it may be determined as 'having the ability to enforce but refusing to enforce, with serious circumstances', and criminal liability shall be pursued for the crime of refusing to enforce judgments or orders." Although the judicial interpretation has clarified the applicability of the litigation initiation theory within a certain scope, there are more complex situations in practice, such as when the enforcement ability of the person obligated to assist in performance starts to be calculated. Therefore, the criteria for determining the enforcement time still need to be further clarified.

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2.2. Confusion in the criterion for judging "having the ability to enforce" and "refusing to enforce"

Disputes over the determination of "having the ability to enforce" mainly focus on the scope of identifying enforcement capacity. First, in judicial practice, courts usually make formal conviction in accordance with the circumstances stipulated by judicial interpretations, ignoring the substantive review of the enforcement capacity of the person subject to enforcement. By reading relevant judicial documents [3-5], it can be found that in judicial practice, courts often measure the performance capacity of the person subject to enforcement by inquiring about the property under their name, bank flow, and transaction acts between them and their relatives and interested parties. If the person subject to enforcement refuses to report property information, the court's ability to discover property is limited, making it difficult to determine their enforcement capacity. At this time, many courts often directly apply specific circumstances in the Interpretation such as "having acts of refusing to enforce including refusing to report or making false reports on property information, violating the people's court's consumption restriction order" to find the person subject to enforcement guilty of the crime of refusing to enforce judgments or orders. This practice of directly identifying acts of evading enforcement as constituting the crime of refusing to enforce judgments or orders ignores the review of the enforcement capacity of the person subject to enforcement and is in urgent need of reflection. Second, it is debatable whether the remaining property of the person subject to enforcement can still be used to determine their enforcement capacity after the court has seized a certain amount of their property. For example, if the amount of property seized and detained by the enforcement department of the court from the person subject to enforcement is greater than the amount of debt to be performed, and the person subject to enforcement has not disposed of the seized property, but there is evidence proving that the person still has other property besides the seized and detained property, can the remaining property be included in the scope of determining enforcement capacity? Due to the lack of unified legal provisions, courts in different regions adopt different judgment criteria, which is likely to lead to the problem of "different judgments for similar cases".

Differences in the determination of "refusing to enforce" mainly focus on the identification of acts of refusing to enforce. First, the current judgment of "refusing to enforce" still mainly relies on the enumerated circumstances in judicial interpretations, and no clear identification criterion has been formed. It is generally believed that the level of "being unenforceable" can only be reached when the enforcement authority has exhausted all enforcement measures (non-penal measures) but still fails to achieve the enforcement purpose [4]. However, judicial judgments rarely elaborate on the process of taking preliminary enforcement measures, but directly find that "enforcement is impossible" based on the existence of acts of refusing to enforce by the person subject to enforcement, ignoring the analysis of the degree of enforcement. Relevant local normative documents stipulate that "causing the judgment or ruling to be unenforceable" includes both the situation where the judgment or ruling is totally unenforceable and partially unenforceable, as well as the situation where it is ultimately unenforceable and temporarily unenforceable. But there is still a dispute over whether "being unenforceable" includes "being temporarily unenforceable". For temporary obstacles to enforcement, if the enforcement purpose can be achieved by taking non-penal measures, it should not be determined that the crime of refusing to enforce judgments or orders is constituted; an overly extensive interpretation of "being unenforceable" may lead to the abuse of criminal punishment [4]. Second, in specific cases, on the premise that litigation debts are determined, it has not yet been concluded whether the act of the person subject to enforcement choosing to repay non-litigation debts constitutes an act of refusing to enforce. For example, in the

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public prosecution case of Ding Mouhong and Ding Mouping for the crime of refusing to enforce judgments or orders in Xinyu City, Jiangxi Province [6], the person subject to enforcement invested funds in other fields besides repaying litigation debts. In the end, the court held that "the two persons subject to enforcement failed to truthfully report changes in property to the court during the case enforcement period, and used most of the funds for personal consumption, operation and repaying debts that had not been judicially confirmed and had no priority", and found that they had committed acts of refusing to enforce and constituted the crime of refusing to enforce judgments or orders. In fact, through a comprehensive analysis of some judicial judgments [5,7], it can be found that in current judicial practice, it is held that litigation debts have priority, and failing to repay litigation debts due to repaying non-litigation debts may constitute "refusing to perform". But the legitimacy of this handling method remains to be considered. Debts are inherently equal in nature, and most of the circumstances of refusing to perform stipulated in judicial interpretations refer to the person subject to enforcement refusing to enforce for the sake of safeguarding their own interests, but when they choose to repay non-litigation debts first, they are often not subjectively motivated by their own private interests [5]. Directly affirming the priority of litigation debts may damage the interests of creditors of non-litigation debts. However, how should it be determined if the person subject to enforcement maliciously hinders the implementation of judgments and rulings by choosing to repay non-litigation debts first? All these problems need to be solved by further clarifying the criterion for determining refusing to enforce.

3. Analysis of the causes of the judicial determination dilemmas of "having the ability to enforce but refusing to enforce"

After the issuance of the Interpretation, the above-mentioned dilemmas still exist in the judicial application of "having the ability to enforce but refusing to enforce". The causes of these judicial determination dilemmas are as follows: first, there are differences in the definition of the legal interest of the crime of refusing to enforce judgments or orders; second, there is a deviation in the logical determination of "having the ability to enforce" and "refusing to enforce" in judicial practice.

3.1. Differences in the definition of the legal interest of the crime of refusing to enforce judgments or orders

The divergent definition of the legal interest of the crime of refusing to enforce judgments or orders is one of the important reasons for the above dilemmas. As the guiding basis for the interpretation of constitutive elements, different views on the legal interest of each crime will lead to different views on the interpretation of constitutive elements. At present, there are three main views in the academic circle on the legal interest of the crime of refusing to enforce judgments or orders: first, the state legal interest theory, which holds that the protected legal interest of this crime is judicial credibility. The compulsory enforcement system is a national system to protect the interests of creditors from the perspective of social stability, and the smooth development of enforcement activities is of great significance for maintaining the national legal order [1]. Second, the individual legal interest theory, which holds that the protected legal interest of the crime of refusing to enforce judgments or orders is the interests of private law subjects, and acts that hinder compulsory enforcement essentially damage the interests of creditors. Third, the complex legal interest theory, which holds that the protected legal interest of the crime of refusing to enforce judgments or orders is a combination of state legal interests and individual legal interests. Acts of refusing to enforce infringe on the state's judicial trial interests and the legitimate rights and interests of the right holder at the same time.

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The main reason affecting the starting point of the enforcement time lies in the differences among different scholars on the legal interest of the crime of refusing to enforce judgments or orders. For example, those who hold the state legal interest theory often support the effective judgment theory. The reason is that if the determination time is advanced to before the judgment takes effect, the judgment has not yet been made and the state's judicial trial interest (judicial credibility) does not exist yet; if the determination time is delayed to the time of enforcement, the person subject to enforcement often transfers property, resulting in the inability to enforce the judgment and damaging judicial credibility. Those who hold the individual legal interest theory can advance the determination time to the start of litigation, restrict the act of the person subject to enforcement transferring property to the greatest extent, and protect the interests of creditors. However, this method may lead to an overly early determination time, where the rights and obligations of both parties have not yet been determined, excessively interfering with the person subject to enforcement's freedom to dispose of property. At the same time, advancing the time determination of the crime of refusing to enforce judgments or orders shifts the risk of erroneous judgments to the person subject to enforcement, seriously damaging their property rights and interests, and is not in line with the requirements of fair judgment. Those who hold the complex legal interest theory take the effective judgment theory as the principle and handle special circumstances in accordance with the provisions of the judicial interpretation, but still cannot restrict the person subject to enforcement from transferring their property in advance, threatening judicial credibility and the rights and interests of the right holder.

Through the above analysis, three different situations of the determination time of the crime of refusing to enforce judgments or orders can be found: first, to safeguard judicial credibility and the rights of the right holder, advance the determination time of the crime to restrict pre-enforcement refusal acts, but the risk is that erroneous civil judgments will damage the interests of the person subject to enforcement; second, only safeguard the legitimate interests of the person subject to enforcement and delay the determination time of the crime to the time of enforcement, which is obviously inappropriate and leads to a great reduction in the possibility of realizing the enforcement result; third, still adopt the effective judgment theory, at which time judicial credibility, the rights of the right holder and the legitimate rights and interests of the person subject to enforcement are balanced, but the problem of "difficulty in enforcement" will resurface. Therefore, the key to solving the problem of "difficulty in enforcement" lies in strengthening property preservation measures during litigation, rather than advancing the time determination of having the ability to enforce.

Similarly, the scope of determining enforcement capacity and the determination of acts of refusing to enforce by repaying non-litigation debts are also affected by the definition of legal interests. First, the amount of property seized and detained by the court is generally sufficient to pay off the confirmed creditor's rights and enforcement costs. From the perspective of safeguarding national legal interests and creditors' legal interests, all the property of the person subject to enforcement should be included in the scope of enforcement capacity. The act of seizing and detaining property is essentially to urge the person subject to enforcement to actively perform the judgment obligations. Even if the creditor can obtain priority compensation for the seized and detained property, the auction and realization of the property is uncertain [2], and its value may be lost due to unexpected events, leaving the creditor still unable to realize their own rights and interests. However, restricting the person subject to enforcement's right to dispose of property even after seizing sufficient property may excessively interfere with their freedom of disposition, and also make the person subject to enforcement bear the risk of property depreciation indefinitely, which is against the principle of fairness. Second, based on the state legal interest theory, determining that

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repaying non-litigation debts constitutes an act of refusing to enforce means recognizing the priority of litigation debts, which is conducive to safeguarding judicial credibility and establishing judicial authority [5]. However, not all creditor's rights need to be exercised through litigation. If some simple creditor's rights lose repayment priority because they have not gone through litigation, it will not only infringe on the person subject to enforcement's freedom to choose to perform creditor's rights, but also be more unfair to third-party creditors and damage their creditor's rights and interests. Therefore, clarifying the scope of the person subject to enforcement's enforcement capacity is of great significance for realizing the interests of creditors and balancing the rights and interests of multiple parties.

3.2. Deviations in the logical determination of "having the ability to enforce but refusing to enforce"

At present, there is a logical fallacy in the determination of "having the ability to enforce but refusing to enforce" in the judicial practice of identifying the crime of refusing to enforce judgments or orders. China's legal provisions and relevant judicial interpretations do not clearly define the scope for determining enforcement capacity, yet it should be held that "having the ability to enforce" is reflected by a collection of objective property facts, rather than a single act [6]. An analysis of the circumstances of "having the ability to enforce but refusing to enforce with serious circumstances" enumerated in the Interpretation and the determination logic in judicial judgments [3,5] reveals that the focus of identifying the crime of refusing to enforce judgments or orders is placed on confirming the acts of "refusing to enforce", without reflecting the judgment process of "having the ability to enforce". For example, in the public prosecution case of Ding Mouhong and Ding Mouping for the crime of refusing to enforce judgments or orders in Xinyu City, Jiangxi Province [6], Ding Mouhong and Ding Mouping were ordered by the court to fulfill the repayment obligation due to a private lending dispute. However, after the case entered the enforcement stage, the two opened another account to receive funds, and only repaid a portion of the loan after the funds arrived. Except for the loan forcibly deducted by the court, the remaining property was all used for their other business operations and repaying other debts. In the end, the court presumed that the defendants had the ability to enforce the judgment because they failed to declare their property in a timely manner and used most of their property for personal consumption and repaying other debts, and at the same time found that their acts constituted a typical evasion behavior, thus convicting them of the crime of refusing to enforce judgments or orders.

It can be seen from the above relevant cases that courts often lack a comprehensive review of enforcement capacity, only make a formal determination of the person subject to enforcement's capacity based on the funds they receive, and identify the person's act of choosing to repay other debts as refusing to enforce. Such a judicial decision method that lacks substantive review of enforcement capacity seriously affects the subsequent determination of the crime of refusing to enforce judgments or orders. There is a progressive logical hierarchy between "having the ability to enforce" and "refusing to enforce" [6]. It is difficult to identify the act of refusing to enforce by the person subject to enforcement and impose punishment on them when their enforcement capacity cannot be determined. Conducting only a formal review of the person subject to enforcement's capacity not only damages the person's interests, but also leads to the abuse of the crime of refusing to enforce judgments or orders. If the person subject to enforcement files an appeal, it will further reduce judicial efficiency and increase the trial burden on courts. Therefore, when judging whether a person subject to enforcement constitutes the crime of refusing to enforce judgments or orders, a comprehensive review of their enforcement capacity should be conducted first. However, in

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practice, judicial organs often ignore the comprehensive and objective review of evidence for "having the ability to enforce" due to a result-oriented approach, leading to a simplistic demonstration and forced logic in the determination of the crime of refusing to enforce judgments or orders.

4. Optimization paths for the judicial determination of "having the ability to enforce but refusing to enforce"

Based on the dilemmas faced in the judicial determination of "having the ability to enforce but refusing to enforce" and their underlying causes discussed earlier, the optimization paths for the crime of refusing to enforce judgments or orders can be carried out from the following three dimensions: first, clarify the specific legal interests protected by this crime; second, correct the logical relationship between "having the ability to enforce" and "refusing to enforce" in judicial determination; third, strengthen the normative judgment of "having the ability to enforce" and "refusing to enforce".

4.1. Clarify that the protected legal interest of the crime of refusing to enforce judgments or orders should be a complex legal interest

The complex legal interest theory should be adopted for the protected legal interest of the crime of refusing to enforce judgments or orders, that is, it protects the smooth progress of judgments and rulings of people's courts and the personal and property legal interests of the right holder [7]. The act of refusing to enforce by the person subject to enforcement directly infringes on the personal or property rights and interests of the right holder. If the protected legal interest of the crime of refusing to enforce judgments or orders is regarded as merely state legal interests, the protection of the right holder's interests will be ignored. If only individual legal interests are listed as the protected legal interest of the crime, it will be difficult to reflect the authority of judicial rulings. The complex legal interest theory takes both state legal interests and individual legal interests into account, clarifies the protected legal interests of the crime of refusing to enforce judgments or orders from macro and micro, direct and indirect perspectives, and at the same time limits the establishment of the crime—that is, the crime of refusing to enforce judgments or orders is only established when both dual legal interests are infringed [2].

By adopting the complex legal interest theory, the problems of determining the time of the crime of refusing to enforce judgments or orders and the priority between litigation debts and non-litigation debts can be resolved. First, in determining the time of the crime of refusing to enforce judgments or orders, a substantive judgment standard should be adopted, taking the effective judgment theory as the principle and analyzing specific cases on their merits. If the person subject to enforcement does not take acts of transferring property in advance, the time determination starts from the date when the judgment takes effect. If the person subject to enforcement has transferred property in advance, it is necessary to examine the person's subjective malice and objective acts, determine the nature of the act of transferring property [3], and after excluding legitimate reasons, specifically analyze whether the act has damaged the enforcement of the judgment and the realization of the right holder's creditor's rights. Fixing the time determination of the crime of refusing to enforce judgments or orders will make it difficult to balance the relationship between state legal interests, the right holder's legal interests and the person subject to enforcement's freedom to dispose of their own property, thus making it difficult to effectively safeguard the interests of judicial rulings and the right holder. Second, when dealing with the repayment of litigation debts and

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non-litigation debts, in addition to examining the purpose of disposal by the person subject to enforcement, the legality of repaying non-litigation debts should also be examined. From the perspective of the inherent nature of debts, litigation debts and non-litigation debts are equal and should be protected equally. It should not be directly considered that litigation debts have priority and that acts of refusing to enforce exist because of the state legal interests behind litigation debts. State legal interests should not be compared with the private law interests between the right holder and a third party. Not all debts must be resolved through litigation, and the interests of creditors of non-litigation debts shall not be damaged due to litigation debts. It is necessary to examine the subjective will of the person subject to enforcement to repay non-litigation debts first, as well as the authenticity and legality of non-litigation debts. If there are legitimate reasons for choosing to repay non-litigation debts, the person subject to enforcement should not be directly determined to have acts of refusing to enforce and constitute the crime of refusing to enforce judgments or orders.

4.2. Clarify the logical determination relationship between "having the ability to enforce" and "refusing to enforce"

It should be clarified that "having the ability to enforce" and "refusing to enforce" are constituent elements of the same level. First, "having the ability to enforce" also needs to be proved by specific facts, and cannot rely solely on empirical reasoning. Affected by criminal policies, courts often neglect the review of the enforcement capacity of the person subject to enforcement when determining the crime of refusing to enforce judgments or orders. This result-oriented conviction method violates the requirement of the modesty of criminal law and also ignores the protection of the interests of the person subject to enforcement. Second, attention should be paid to giving play to the independent "exoneration" function of "having the ability to enforce". Having the ability to enforce is a prerequisite for judging whether the crime of refusing to enforce judgments or orders is constituted. By reviewing the enforcement capacity of the person subject to enforcement, the application of the crime is tested to realize the screening of the crime. Judicial interpretations should also attach importance to the determination of "having the ability to enforce", clarify the constituent elements and review methods of "having the ability to enforce", and avoid directly identifying "acts" as capacity. At the same time, judicial interpretations should separately interpret "having the ability to enforce" and "refusing to enforce" to avoid confusion in practical determination and highlight the independent value of "having the ability to enforce".

It should be held that there is a progressive logical relationship between "having the ability to enforce" and "refusing to enforce" [6]. Only after determining that the person subject to enforcement has the ability to enforce can a judgment be made on whether there are acts of refusing to enforce. In practice, because the court usually collects evidence and transfers materials first, and finally conducts the trial, there is a contradiction between the identity of the prosecutor and the judge [8]. The court forms a prejudice due to the acts of refusing to enforce by the person subject to enforcement, thus ignoring the comprehensive review of enforcement capacity. The fundamental purpose of punishing the crime of refusing to enforce judgments or orders is not to punish the objective state of the person subject to enforcement failing to enforce the judgment, but to punish their subjective intent of refusing to enforce and damaging judicial credibility. By confirming the primacy of "having the ability to enforce" in the determination of the crime of refusing to enforce judgments or orders, we can give play to its role in screening crimes, show consideration for the person subject to enforcement and save judicial resources. At the same time, prioritizing the determination of enforcement capacity conforms to the internal logic of the determination of the crime of refusing to enforce judgments or orders. A comprehensive and substantive review of

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enforcement capacity is more conducive to measuring the subjective malice of the person subject to enforcement in refusing to enforce, and also conducive to the subsequent determination of serious circumstances, thus tightening the argumentation logic of the crime and enhancing judicial credibility.

4.3. Strengthen the normative judgment of "having the ability to enforce" and "refusing to enforce"

After clarifying the progressive logical determination relationship between "having the ability to enforce" and "refusing to enforce", we should further strengthen the normative judgment of the two on this basis. For the determination of "having the ability to enforce", a comprehensive review of the enforcement capacity of the person subject to enforcement should be conducted. First, the scope of capacity determination determines whether the person subject to enforcement is convicted of a crime, so a full and comprehensive investigation should be carried out. Some scholars have proposed that "having the ability to enforce" is reflected by a collection of objective property facts, so the scope of property basis for capacity determination should be greater than or equal to the standard of "completing property investigation" in the civil enforcement procedure [6]. Even if the court has seized and detained part of the property of the person subject to enforcement, it still needs to review all their property. If there is still property other than the seized and detained property and the person fails to actively perform the obligation, they may still be determined as "having the ability to enforce but refusing to enforce" [2]. Second, the author believes that the debts owed by the person subject to enforcement can be included in the investigation scope when conducting a comprehensive review of their property. By having the person subject to enforcement voluntarily declare the debts they owe, we can judge their subjective malice in repaying non-litigation debts. If the person subject to enforcement repays non-litigation debts that have not been declared, it can be determined that they have the intent to refuse to enforce the judgment and there are acts of refusing to enforce; if they repay non-litigation debts that have been declared, it should not be determined that they have the intent to refuse to enforce the judgment and there are no acts of refusing to enforce. Declaring debts also facilitates the court to conduct a comprehensive evaluation of their enforcement capacity and clarify the contradictions between litigation debts and non-litigation debts. In addition, a comprehensive review of enforcement capacity requires the cooperation among public security organs, procuratorates and courts, and the establishment and implementation of a coordinated crackdown mechanism [9]. By clarifying the division of labor, strengthening the cooperation between public security organs and courts in investigating the enforcement capacity of the person subject to enforcement, we can avoid the situation where public security organs only investigate based on the clues provided by the court and neglect the comprehensive investigation of the person's property. Establish a communication and coordination mechanism, unify the criteria for determining enforcement capacity, and work together to form a joint force to solve the problem of "difficulty in enforcement".

For the determination of "refusing to enforce", we should consider the subjectivity, objectivity and result of the person subject to enforcement. First, subjectively, the person subject to enforcement is required to have malice and intentionally fail to perform the judgment or ruling. Second, objectively, there must be acts of refusing to enforce. In addition to the specific acts stipulated in judicial interpretations, mere inaction is difficult to be determined as an act of refusing to enforce [7]. Mere inaction can first be restricted through the compulsory enforcement system; criminal punishment is the last resort, and acts of refusing to enforce can only be determined after all compulsory enforcement measures have been exhausted. Finally, the result requires that the act has

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reached the level of "causing the judgment or ruling to be unenforceable". In the face of temporary inability to enforce, priority should be given to considering whether the person subject to enforcement can remove the obstacles to enforcement. If the obstacles can be removed and enforcement can be carried out within a reasonable time, it should not be determined that the crime of refusing to enforce judgments or orders is constituted; if the obstacles cannot be removed, it should be determined that the crime is constituted.

5. Conclusion

On the basis of clarifying that the legal interest of the crime of refusing to enforce judgments or orders is a complex legal interest, adopting a substantive judgment for the determination of enforcement time, taking the effective judgment theory as the judgment principle, and conducting case-by-case judgment at the same time, helps to balance the interests of judicial rulings, the interests of the right holder and the interests of the person subject to enforcement. By clarifying the internal logic and determination criteria of the two constituent elements of "having the ability to enforce" and "refusing to enforce" in the crime of refusing to enforce judgments or orders, it not only helps to unify the judicial application of the crime, but also effectively alleviates the problem of "difficulty in enforcement". For the normative determination of "having the ability to enforce", a full review of the enforcement capacity of the person subject to enforcement should be conducted, and the exoneration function of "having the ability to enforce" should be brought into play. At the same time, it is necessary to clarify the constituent elements of acts of refusing to enforce, and flexibly apply them to practical situations on the basis of judicial interpretations. In the face of new types of criminal methods that may appear in the era of artificial intelligence, it is necessary to strictly standardize the determination of the constituent elements of the crime of refusing to enforce judgments or orders, so as to tighten the legal network and reflect the modesty of criminal law.

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