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LIABILITY OF A PUBLIC ENFORCEMENT OFFICER FOR DAMAGE CAUSED IN THE EXERCISE OF PUBLIC POWERS: A REVIEW OF THE SERBIAN SUPREME COURT'S JUDGMENT

The delegation of public powers from the courts to public enforcement officers within the enforcement procedure raises the issue of the supervision of the work of the new judicial professionals. Public enforcement officers are supervised by the Serbian Ministry of Justice and the Chamber of Public Enforcement Officers, and any irregularities identified during such supervision can give rise to disciplinary proceedings. The courts decide on legal remedies and other legal means directed against the public enforcement officer's decisions and actions. Judicial mechanisms of legal control are regulated by law, and supervision by the Ministry of Justice and the Chamber of Public Enforcement Officers is regulated by law and bylaws. Liability of the public enforcement officer for damages caused in the exercise of public powers is regulated by a single statutory provision, which has given rise to uncertainties in judicial practice. This paper analyses the Serbian Supreme Court's judgment addressing disputed legal issues.

Key words: *Public enforcement officer. – Exercise of public powers. – Liability for damages. – The Supreme Court of Serbia.*

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1. PROCEEDINGS BEFORE PUBLIC ENFORCEMENT OFFICER AND PROCEEDINGS BEFORE COURTS OF LOWER INSTANCE

In enforcement case II 3/2023, the enforcement creditor filed a motion for enforcement before a public enforcement officer based on an enforceable document – a final and enforceable decision rendered by the Misdemeanor Court in Pančevo, PR 8502/2021 of 18 July 2022, against the enforcement debtor, i.e., the Republic of Serbia, the Misdemeanor Court in Pančevo. The public enforcement officer rendered the writ of execution, II 3/2023, on 30 January 2023. The enforcement creditor filed an objection against that writ. By ruling IPV (I) 37/2023 of 7 March 2023, the Basic Court in Pančevo rejected the objection as ill-founded and confirmed the challenged writ of the public enforcement officer. Then, on 23 March 2023, the public enforcement officer rendered the ruling determining the costs of proceedings. In that ruling, the costs of the enforcement proceedings before the public enforcement officer were assessed at RSD 1.861,20. This ruling ordered that the enforcement creditor reimburse these costs. In the reasoning of the ruling, the public enforcement officer referred to the provisions of the Law on Enforcement and Securing of Claims¹ and the Schedule of Fees for Public Enforcement Officers.² The enforcement creditor filed an objection against the ruling of the public enforcement officer. In ruling IPV (I) 67/2023 of 13 June 2023, the Basic Court in Pančevo adopted the objection and repealed the public enforcement officer's ruling determining the costs of proceedings. In the same ruling, the Basic Court in Pančevo rejected the enforcement creditor's claim for reimbursement of the costs incurred in drafting the objection, because these were not ancillary costs that could be charged to the enforcement debtor. According to the Basic Court in Pančevo, the enforcement debtor did not cause these costs, and they were not costs incurred in conducting the enforcement proceedings. The enforcement creditor engaged an attorney and paid RSD 18.000 to the attorney's account as reimbursement for the costs of drafting the objection.

After the Basic Court in Pančevo rejected the enforcement creditor's claim for reimbursement of the costs incurred in drafting the objection against the public enforcement officer's ruling, the enforcement creditor filed a claim for damages against the public enforcement officer. In the civil proceedings,

¹ Zakon o izvršenju i obezbeđenju (Law on Enforcement and Securing of Claims) – ZIO, *Official Gazette of the RS* 106/2015, 106/2016 – authentic interpretation, 113/2017 – authentic interpretation, 54/2019, 9/2020 – authentic interpretation, 10/2023 – other law and 91/2025.

² Javnoizvršiteljska tarifa (Schedule of Fees for Public Enforcement Officers), *Official Gazette of the RS* 93/2019 and 15/2023.

the enforcement creditor sought compensation for damages from the defendant, i.e., the public enforcement officer, in the same amount that the Basic Court in Pančevo had previously refused to award as reimbursement of the costs incurred in conducting the enforcement proceedings, together with the statutory default interest from the date of judgement until the day of collection, and the costs of the civil proceedings from the day when the judgement became enforceable until the day of collection. The Basic Court in Pančevo rejected the claim as ill-founded. The court found that the enforcement officer cannot be held liable for any damages that the plaintiff, i.e., the enforcement creditor, may have suffered in the enforcement proceedings. The Basic Court in Pančevo found that the defendant's conduct did not cause the sustained damage, because the public enforcement officer had acted as a holder of public powers, in accordance with the relevant statutory provisions. It is undisputed that the plaintiff incurred the legal costs for an attorney's drafting of the objection, and that the objection was adopted. The mere fact that the public enforcement officer has incorrectly interpreted a statutory provision or applied an incorrect statutory provision does not constitute a breach of duty in the performance of his functions. An understanding of the law, and a decision based on that opinion, cannot give rise to liability for damages. Taking the above into consideration, in judgment P 1516/2023 of 23 January 2024, the Basic Court in Pančevo rejected the claim as ill-founded, and ordered the plaintiff to reimburse the costs of the civil proceedings to the public enforcement officer.

The plaintiff filed an appeal against the judgment of the Basic Court in Pančevo. In judgment Gž 323/2024 of 29 October 2024, the Higher Court in Pančevo reversed the first instance judgment rendered by the Basic Court in Pančevo and accepted the plaintiff's claim. In its judgment, the court obligated the public enforcement officer to reimburse the plaintiff for RSD 18.000, together with statutory default interest from the date of judgment until the day of collection, and the costs of the civil proceedings together with statutory default interest from the day when the judgment became enforceable until the day of collection. The Higher Court in Pančevo concluded that the defendant, i.e., the public enforcement officer, was at fault for the damage suffered by the plaintiff (formerly the enforcement creditor), since the plaintiff had to engage an attorney to prepare an objection against the public enforcement officer's ruling determining the costs of the enforcement proceedings. In the reasoning of the judgment, the court concluded that the requirements under Articles 154 and 158 of the Law of

Contract and Torts (ZOO)³ for establishing the liability of the defendant, i.e., the public enforcement officer, for the damage suffered by the plaintiff (the former enforcement creditor) had been met.

The first instance civil proceedings before the Basic Court in Pančevo and the appellate proceedings before the Higher Court in Pančevo were governed by the provisions of the Civil Procedure Law (ZPP)⁴ regulating proceedings in small claims disputes. This is a special procedure in which numerous rules differ from those applicable to general civil procedure. The civil lawsuit is not served on a defendant for answer. Instead, it is served together with the summons to the main hearing. No preliminary hearing is held (Art. 472 ZPP). The parties are obliged to present the facts on which their claims are based and propose evidence to establish these facts by the conclusion of the first hearing of the main trial, meaning that they cannot present new facts or propose new evidence in an appeal against the judgment. The first instance judgment can be challenged only on the grounds of absolute substantial violation of civil procedure rules and erroneous application of substantive law (Art. 473 and Art. 479 para. 1 ZPP). The court of second instance cannot repeal a judgment rendered by the court of first instance and return the case to the first instance court for a repeated trial, if it considers that, because of new facts and evidence, and for proper establishment of facts, it is necessary to hold a new trial before the court of first instance. Also, the court of second instance cannot repeal a judgment rendered by the court of first instance and return the case to the first instance court for a repeated trial, if it considers that the erroneous application of the substantive law resulted in an incomplete establishment of the facts (Art. 479 para. 2 ZPP).

Article 479 para. 6 ZPP states that parties cannot seek review against a second instance judgment in the proceedings in small claims disputes. Initially, it was disputed whether this statutory provision refers only to the (regular) review or also to the special review. In its decisions, the Supreme Court of Cassation, i.e., the Supreme Court,⁵ stated that a special review is

³ Zakon o obligacionim odnosima (Law of Contract and Torts) – ZOO, *Official Gazette of the SFRY* 29/1978, 39/1985, 45/1989 – decision of the CCY and 57/1989, *Official Gazette of the FRY* 31/1993, *Official Gazette of Serbia and Montenegro* 1/2003 – Constitutional Charter and *Official Gazette of the RS* 18/2020.

⁴ Zakon o parničnom postupku (Civil Procedure Law) – ZPP, *Official Gazette of the RS* 72/2011, 49/2013 – decision of CC, 74/2013 – decision of CC, 55/2014, 87/2018, 18/2020 and 10/2023 – other law.

⁵ Zakon o uređenju sudova (Law on Regulation of the Courts), *Official Gazette of the RS* 10/2023, Art. 92, states that as from the date of constitution of the High Judicial Council, i.e., 10 May 2023, the Supreme Court of Cassation shall continue its work as a Supreme Court in accordance with the Law on Regulation of the Courts.

allowed in the proceedings in small claims disputes if the conditions set out in Article 404 ZPP are met. This means that the Supreme Court can decide on a special review in small claims proceedings when it finds that an interpretation of a legal issue of general interest is required, that uniform case law needs to be ensured, or that a new interpretation of the law is warranted.⁶

The public enforcement officer filed a request for special review of the judgment of the Higher Court in Pančevo. The Supreme Court ruled that the special review was admissible, stating that the conditions set out in Article 404 ZPP are met, namely, that it was necessary to ensure uniform case law.

2. THE SUPREME COURT'S RULING AND LEGAL POSITIONS

Upon deciding on the public enforcement officer's motion for a special review, in judgment Rev 1028/2025 of 21 November 2025, the Supreme Court reversed judgment Gž 323/2024 of the Higher Court in Pančevo of 29 October 2024, confirmed judgment P 1516/2023 of the Basic Court in Pančevo of 23 January 2024, and rejected the plaintiff's appeal as ill-founded.⁷ In the same judgment, the Supreme Court rejected the plaintiff's request for reimbursement of the costs of the appellate proceedings, and ordered the plaintiff to reimburse the costs of the review proceedings. In its reasoning, the Supreme Court concluded that the Higher Court in Pančevo, as the appellate court, had erroneously applied substantive law by finding that the defendant, i.e., the public enforcement officer, was liable for the damage sustained by the plaintiff. The Supreme Court found that the fact that the ruling of the public enforcement officer, determining the costs of the proceedings had been repealed by the ruling of the Basic Court in Pančevo, could not constitute a basis for the public enforcement officer's liability for damages. If the public enforcement officer rendered a decision in accordance with his statutory powers, the mere fact that he failed to apply the statutory provision that should have been applied or applied it incorrectly does not mean that the requirements set out in Article 498 para. 1 of the ZIO have been met. This Article states that a public enforcement officer is personally liable with all his property for any damages caused through his fault in the course of enforcement or proceedings for securing of claims. The reversal

⁶ Supreme Court of Cassation, Judgment, Rev 9826/2022 of 15 December 2022, Supreme Court of Cassation, Ruling, Rev 4902/2019 of 4 December 2019, Supreme Court of Cassation, Ruling, Prev 260/2015 of 10 May 2016.

⁷ Supreme Court, Judgment, Rev 1028/2025 of 21 November 2025.

or repeal of the public enforcement officer's decision does not in itself mean that the public enforcement officer is liable for the sustained damages. Article 498 para. 1 of the ZIO refers to damage caused by a public enforcement officer through his fault. In its reasoning of the judgment, the Higher Court in Pančevo referred only to Articles 154 and 158 of the ZOO, and it is not apparent on what basis the public enforcement officer was found liable for the damage caused. The Higher Court in Pančevo accepted the factual findings of the court of first instance as correct and complete, but found that the Basic Court in Pančevo had erroneously applied substantive law when it concluded that reversing or repealing the public enforcement officer's decisions, by itself, could not constitute a basis for the public enforcement officer's liability for damages. The Higher Court in Pančevo found that the public enforcement officer was liable for damages solely because his ruling had been repealed in the appellate proceedings. Contrary to the view of the Higher Court in Pančevo, the Supreme Court found that it was not proven that the public enforcement officer acted unlawfully or improperly, namely, it was not proven that the public enforcement officer caused any damage to the plaintiff, i.e., the enforcement creditor in the enforcement proceedings, through his fault. Taking the above into consideration, the Supreme Court reversed the judgment of the Higher Court in Pančevo and found that the public enforcement officer acted within his public powers and could not be liable for any damages. The application of an inappropriate statutory provision or the erroneous interpretation of a statutory provision, namely, the legal understanding adopted in interpreting the law, cannot in itself constitute a basis for the liability of the public enforcement officer, regardless of whether the public enforcement officer's decision had been confirmed, repealed, or reversed in appellate proceedings.

The same issue was also raised before the Supreme Court in the case Rev 2404/2025.⁸ The public enforcement officer rendered the writ of execution, II 128/2022 of 14 September 2022, based on an enforceable document – a final and enforceable judgment, Prr1 73/2021 rendered by the Basic Court in Pančevo. The enforcement debtor in these proceedings was the Republic of Serbia, the High Judicial Council, the Commercial Court in Pančevo. The enforcement creditor filed an objection against that writ. In ruling IPV (I) 139/2022 of 20 October 2022, the Basic Court in Pančevo rejected the objection. On 22 May 2023, the public enforcement officer rendered a ruling determining the costs of proceedings, and ordered the enforcement creditor to pay RSD 3.824,18. The enforcement creditor filed an objection against this ruling. In ruling IPV (I) 94/2023 of 16 June 2023, the Basic

⁸ Supreme Court, Judgment, Rev 2404/2025 of 14 November 2025.

Court in Pančevo adopted the objection, and at the same time, rejected the enforcement creditor's claim for reimbursement of the costs incurred in drafting the objection. In the reasoning of the ruling, the Basic Court in Pančevo stated that these were not ancillary costs that could be charged to the enforcement debtor, because the enforcement debtor did not cause them, and these are not costs incurred in conducting the enforcement proceedings. The enforcement creditor engaged an attorney and paid RSD 18.000 to the attorney's account as reimbursement for the costs of drafting the objection. Subsequently, the enforcement creditor sought the same amount of RSD 18.000 in civil proceedings as compensation for damages caused by the unlawful and irregular conduct of the public enforcement officer. In judgment P 1532/2023 of 16 January 2024, the Basic Court in Pančevo accepted the plaintiff's claim. In the reasoning of the judgment, the Basic Court in Pančevo stated that the public enforcement officer was at fault for the damage suffered by the plaintiff (formerly the enforcement creditor), since the plaintiff had to engage an attorney to prepare an objection against the public enforcement officer's ruling determining the costs of the enforcement proceedings. The Basic Court in Pančevo concluded that the requirements, under Articles 154 and 158 of the ZOO for establishing the liability of the public enforcement officer for the damage suffered by the plaintiff, had been met. Upon deciding on the public enforcement officer's appeal, in judgment P 315/2024 of 29 October 2024, the Higher Court in Pančevo rejected the appeal as ill-founded and confirmed the challenged judgment of the Basic Court in Pančevo. The Higher Court in Pančevo concluded that the Basic Court in Pančevo had correctly applied substantive law when it ordered the public enforcement officer to pay damages to the plaintiff. In this case, the Supreme Court also accepted the motion for a special review to ensure uniform case law. In the reasoning of the judgment, the Supreme Court held that the plaintiff's claim for reimbursement of costs had already been decided by the Basic Court in Pančevo in the enforcement proceedings, in which the plaintiff had the capacity of an enforcement creditor. The enforcement creditor's claim for reimbursement of the costs was rejected with final effect in the enforcement proceedings, meaning that the enforcement creditor cannot claim the same amount as damages in civil proceedings. The Supreme Court also stated that the public enforcement officer cannot be held liable for his legal understanding adopted in interpreting the law.

The Commercial Appellate Court also addressed the liability of public enforcement officers for damages caused in the exercise of their public powers. In its judgment 6 Pž 7329/2022,⁹ upon deciding on the plaintiff's

⁹ Commercial Appellate Court, Judgment, 6 Pž 7329/2022 of 6 June 2024.

appeal against the judgment of the Commercial Court in Belgrade, the Commercial Appellate Court concluded that the fact that a public enforcement officer's decision has been repealed or reversed does not mean that the requirements set out in Article 498 para. 1 of the ZIO have been met. This Article states that a public enforcement officer is personally liable with all his property for any damages caused through his fault in the course of enforcement or securing of claims proceedings. If the public enforcement officer acted in accordance with his statutory powers, the reversal or repeal of the public enforcement officer's decision does not lead to his liability for any sustained damages.

3. DELEGATION OF PUBLIC POWERS TO PUBLIC ENFORCEMENT OFFICERS

Article 97 it. 2 of the Constitution states that the Republic of Serbia organizes and provides for proceedings before courts and other state bodies. The Constitution establishes the principles governing the organization of the judiciary and the exercise of the judicial function, as well as the constitutional rights that must be guaranteed in judicial proceedings. Article 137 of the Constitution is named "Delegation of Public Powers and Public Services". The law can stipulate delegation of performing particular affairs that fall within the competence of the Republic of Serbia to the autonomous province or local self-government unit (para. 1). Particular public powers can be delegated to enterprises, institutions, organizations and individuals (para. 2). Public powers can also be delegated to specific bodies through which they perform a regulatory function in particular fields or affairs (para. 3). The Republic of Serbia, autonomous provinces and local self-government units can establish public services (para. 4). Their organization and work shall be stipulated by law (para. 5).¹⁰

The cited constitutional provisions govern the delegation of public powers in public administration. The Constitution does not have a provision relating to the delegation of public powers falling within the competence of the courts to notaries public and public enforcement officers. The original text of the Constitution was adopted in 2006. However, the situation remained

¹⁰ In accordance with Art. 33 para. 4 of the Basic Law of the Federal Republic of Germany, the rule is that the execution of tasks falling within the competence of the state as a permanent duty is delegated to public service officials who are in a public law relationship and must be loyal to public service. <https://www.gesetze-im-internet.de/gg/>, last visited July 30, 2026.

unchanged following the 2022 constitutional amendments concerning the judiciary. This does not imply that the delegation of particular public powers to notaries public and public enforcement officers is unconstitutional.

The Law on Enforcement and Securing of Claims (ZIO) from 2011¹¹ introduced the public enforcement officers into the Serbian legal system. This law used the term “enforcement officer”, and the term “public enforcement officer” was introduced by the law currently in force. Shortly after enforcement officers began operating under the provisions of the 2011 ZIO, the question arose whether the delegation of public powers to the enforcement officers not employed by the courts was constitutional. The initiative submitted to the Constitutional Court challenged the constitutionality of Articles 251–256 of the 2011 ZIO, which regulated special enforcement proceedings for the settlement of monetary claims stemming from utility and related services. The initiators argued that delegating to enforcement officers the authority to decide on a motion for enforcement for the purpose of collecting a monetary claim incurred by utility services and related services violated Article 32 para. 1 of the Constitution, i.e., the right to a fair trial. The initiators stated that, according to the challenged provisions of the 2011 ZIO, enforcement officers assumed the role of the court. The Constitutional Court dismissed the initiative to institute proceedings for assessing the constitutionality of the aforementioned provisions of the Law on Enforcement and Securing of Claims applicable at the time (Bodiroga 2014, 121–122).

The Constitutional Court held that Article 32 para. 1 of the Constitution, which guarantees the right to a fair trial, including the right to access to a court, does not mean a court must decide on the rights and duties of natural and legal persons at every stage of the proceedings. The Constitutional Court had previously expressed the same view in relation to a similar legal issue in the proceedings for assessing the constitutionality of the Law on Misdemeanors, in case IUz-1577/2010 of 25 April 2013. In that regard, the Constitutional Court also relied on the case law of the European Court of Human Rights regarding the scope of the application of Article 6 para. 1 of the European Convention on Human Rights. The European Court of Human Rights has emphasized that States are not required to submit every “dispute over civil rights and duties” to proceedings in which every stage is conducted before judicial bodies. If one stage of proceedings is conducted before some other body, there is no breach of the Convention if those first instance proceedings are subject to subsequent control by a

¹¹ Zakon o izvršenju i obezbeđenju (Law on Enforcement and Securing of Claims) – 2011 ZIO, *Official Gazette of the RS* 31/2011, 99/2011 – other law, 109/2013 – decision of CC, 55/2014.

judicial body that has full jurisdiction (judgment in the case *Albert and Le Compte v. Belgium* of 10 February 1983). According to the Constitutional Court, it is not unconstitutional that the Law on Enforcement and Securing of Claims authorizes the public enforcement officer to decide on a motion for enforcement based on a credible document for a settlement of monetary claims stemming from utility and related services. The legislature may, within the scope of its constitutional powers, stipulate who can conduct particular enforcement proceedings and under which procedural rules. In exercising these powers, the legislature is guided by legislative policy and an assessment of usefulness. Taking the above arguments into consideration, the Constitutional Court held that the initiative was manifestly ill-founded in that respect.¹²

It is also worth noting the Constitutional Court's position concerning the delegation of public powers to notaries public in non-contentious proceedings. In the initiatives submitted to the Constitutional Court, it was stated that, by authorizing notaries public to conduct certain non-contentious proceedings and perform specific acts therein, part of the judicial powers was transferred to bodies belonging to the executive branch. The Constitutional Court held that these claims are entirely ill-founded. It should be taken into consideration that the Law on Non-Contentious Proceedings precisely defines which non-contentious proceedings can be delegated to notaries public and under what conditions, while also providing for judicial supervision and legal remedies against decisions rendered by notaries public acting as court commissioners. For these reasons, the claim that notaries public have assumed powers belonging to the judicial branch cannot be accepted. The court is not excluded from non-contentious proceedings delegated to notaries public. The court acts as a supervisory body and, under the conditions prescribed by law, can withdraw a case assigned to a notary public. Moreover, a decision rendered by a notary public can be challenged in the same manner and under the same conditions as a decision rendered by the court. Taking the above arguments into consideration, the Constitutional Court dismissed the initiative to institute proceedings for assessing the constitutionality of Articles 30a–30z of the Law on Non-Contentious Proceedings (Bodiřoga 2026, 575–576).¹³ The decision was not adopted unanimously, and one of the justices issued a separate opinion, arguing that the Constitutional Court did not address the issue of whether

¹² Constitutional Court, Decision, IUz-782/2012 of 27 February 2014.

¹³ Zakon o vanparničnom postupku (Law on Non-Contentious Proceedings) – ZVP, *Official Gazette of the SRS* 25/1982 and 48/1988, *Official Gazette of the RS* 46/1995 – other law, 18/2005 – other law, 85/2012, 45/2013 – other law and 14/2022.

the conduct of non-contentious proceedings delegated to notaries public could be regarded as an exercise of judicial power and whether judicial powers may be delegated to non-state bodies at all.¹⁴

The legislature delegated certain public powers to public enforcement officers. Article 468 para. 1 of the ZIO states that the public enforcement officer exercises public authorities delegated to him by this or other laws. The public enforcement officer performs his activities either as a sole trader or a member of a partnership whose members are exclusively public enforcement officers (Art. 468 para. 2 ZIO). Unlike a judicial enforcement officer, a public enforcement officer is not a public servant. Instead, he exercises public powers within the broader concept of the judiciary (Keča, Knežević 2022, 514).

Public enforcement officers are appointed by the Minister of Justice following a public competition. Public enforcement officers are appointed for the territory of a higher court and the territory of a commercial court, namely one public enforcement officer for every 25,000 inhabitants. The number of public enforcement officers can increase, depending on the needs or upon a reasoned motion of the Chamber of Public Enforcement Officers (Art. 469 ZIO). Requirements for appointment of the public enforcement officer are stated in Article 471 of the ZIO. A legally capable person, being a citizen of the Republic of Serbia, can be appointed as a public enforcement officer if he meets the following criteria: 1) he has received a degree from the Faculty of Law and passed the public enforcement officer license exam and the bar exam; 2) he has completed the initial training and has at least two years of professional experience in legal affairs after having passed the bar exam; 3) he is worthy of the activity of a public enforcement officer; 4) the general partnership he is a member of is not subject to bankruptcy proceedings; 5) he is not subject to criminal proceedings for crimes against legal transactions or official duty, has not been convicted of a crime and sentenced to an unconditional prison term of at least six months, or of a punishable offence making him unworthy of the public enforcement officer activity (Art. 471 para. 2 ZIO). A person who has been dismissed from the office of a public enforcement officer or a notary public, on whom a disciplinary measure of striking from the directory of attorneys was imposed, or was discharged from a judicial position, or the position of a public prosecutor or deputy public prosecutor, cannot be appointed as a public enforcement officer (Art. 471 para. 3 ZIO).

¹⁴ Constitutional Court, Decision, IUz-97/2020 of 4 February 2021 and the Separate Opinion of Justice Tamaš Korhec.

In accordance with Article 493 of the ZIO, a public enforcement officer exercises the following public powers: 1) issuing a writ of execution based on a credible document for the purpose of settling a monetary claim arising from utility services and related activities; 2) adopting a conclusion to set, amend, or add the means and objects of enforcement; 3) issuing writs and conclusions; 4) undertaking activities that directly conduct enforcement or securing of claims; 5) serving court acts and those of public enforcement officer as well as of the parties and other participants in the proceedings, in cases where the public enforcement officer conducts the enforcement; 6) collecting data on the enforcement debtor (Art. 30); 7) performing other duties prescribed by this or other laws.¹⁵ The public enforcement officer's authorities can be analyzed in different stages of enforcement proceedings (deciding on the enforcement motion and conducting enforcement). The public enforcement officer has exclusive jurisdiction to decide on the enforcement motion and to conduct enforcement to settle monetary claims arising from utility services and related activities. The public enforcement officer also has exclusive jurisdiction to decide on the enforcement motion and to conduct enforcement to settle monetary claims against the enforcement debtor, which is the Republic of Serbia, an autonomous province, or a unit of local government, or the beneficiary of the state budget funds. The court decides on the motion for enforcement in all other enforcement proceedings. When it comes to conducting enforcement, as a rule, the public enforcement officer has exclusive jurisdiction, while the jurisdiction of the court is limited to the following situations: enforcement of performance that can only be undertaken by the enforcement debtor, enforcement of nonperformance or sufferance, enforcement of enforceable documents related to family relationships (except the collection of statutory maintenance), reinstatement of an employee, and enforcement proceedings in which the court's jurisdiction for enforcement is prescribed by a separate law. The public enforcement officer has other authorities that are delegated to him by provisions of the ZIO or by a separate law. The exercise of the aforementioned authorities is subject to various forms of supervision and control (Keča, Knežević 2022, 514; Poznić, Rakić-Vodinelić 2015, 664–665; Rakić-Vodinelić 2012, 296–297).

¹⁵ For example, pursuant to Article 40 of the Court Taxes Act, public enforcement officers are entrusted with the authority to enforce the collection of court taxes from natural persons.

The Ministry of Justice supervises the actions of public enforcement officers. The supervision is conducted upon the motion of the presiding judge of the court for whose territory the public enforcement officer has been appointed, upon the complaint of a party or participant in the proceedings, or on the Ministry's own initiative. While supervising, the Ministry is authorized to obtain data on the manner in which the public enforcement officer has issued decisions and undertaken activities in the particular proceedings, to inspect the choice of means and objects of enforcement and their change during the proceedings, to request evidence of how the documents have been served, to request documentation about the amount of costs of the proceedings, as well as to take other actions prescribed by Article 523 of the ZIO. Following the completion of the supervision, the state official who performed the supervision forwards the minutes of the supervision to the Ministry of Justice's disciplinary prosecutor and the disciplinary prosecutor of the Chamber of Public Enforcement Officers. The Ministry of Justice's supervisory proceedings are governed by the provisions of the ZIO and by the provisions of the bylaws adopted by the Minister of Justice.

The operation of the public enforcement officer is also supervised by the Chamber of Public Enforcement Officers. In the course of supervision, the Chamber of Public Enforcement Officers has the same authorities as the Ministry of Justice and can also take additional actions prescribed by Article 524 of the ZIO, other statutory provisions, and the Chamber's regulations.

The courts also exercise control over the public enforcement officer's actions and decisions when deciding on legal remedies and other legal means in enforcement proceedings. Parties and participants in enforcement proceedings have various legal remedies and other legal means at their disposal through which they can challenge decisions and actions taken by public enforcement officers. In proceedings concerning legal remedies and other legal means, the court examines the legality and correctness of the public enforcement officer's decisions and actions.

Disciplinary accountability is a specific form of accountability of public enforcement officers. A public enforcement officer is held accountable for disciplinary infractions in the event of infringement of the law or other regulations, failure to fulfill his responsibilities under the provisions of the Association and other regulations or general acts of the Chamber, as well as in the event of violation of the reputation of public enforcement officers (Art. 525 ZIO). Severe disciplinary infractions are set by the law, and minor disciplinary infractions are set by the Articles of Association of the Chamber (Art. 526 ZIO). Disciplinary proceedings are usually instigated following

the supervisory proceedings by the Ministry of Justice or the Chamber of Public Enforcement Officers. However, conducting the supervision of a public enforcement officer's actions is not a precondition for the initiation of disciplinary proceedings. The request for determining disciplinary accountability can be filed by the Minister of Justice, the disciplinary prosecutor of the Chamber, the disciplinary prosecutor of the Ministry of Justice, and the president of the Chamber (Art. 536 ZIO). The disciplinary proceedings are conducted by the Disciplinary Commission, whose composition is prescribed by law (Art. 532 ZIO), and administrative dispute proceedings can be initiated against the Disciplinary Commission's decision (Art. 541 ZIO). The most severe disciplinary measure is a permanent ban on practicing the activity of a public enforcement officer.

Public enforcement officers can also be held criminally liable. Pursuant to Article 112 para. 3 it. 3 of the Criminal Code (KZ),¹⁶ a public enforcement officer is deemed to be an official (Stanković, Boranijašević 2020, 701). The KZ prescribes criminal offences against official duty.

Finally, a public enforcement officer is personally liable with all his property for any damages caused through his fault in the course of enforcement or securing of claims proceedings (Art. 498 para. 1 ZIO). The Republic of Serbia is not liable for any such damages (Art. 498 para. 2 ZIO).¹⁷

¹⁶ Krivični zakonik (Criminal Code) – KZ, *Official Gazette of the RS* 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, 94/2024 and 63/2026.

¹⁷ Article 58 para. 1 of the Law on Notary Public Office prescribes that the notary public is liable to redress any damage caused in the course of performing his professional activities. Para. 4 of the aforementioned Article prescribes that the Republic of Serbia is not liable for any such damages. Similar solutions can also be found in comparative law. Article 19 para. 1 of the German Federal Code for Notaries states that when a notary, through intent or negligence, breaches the official duty incumbent upon him vis-à-vis other persons, that notary is required to compensate those persons for the damage arising therefrom. The state is not liable in place of the notary. <https://www.gesetze-im-internet.de/bnoto/BJNR001910937.html>, last visited July 30, 2026. Article 42 para. 1 of the Croatian Public Notaries Act states that a notary public is liable to redress any damage caused by breaching his official duty. Para. 2 of the aforementioned Article states that a notary public is liable for any damages caused in accordance with the general rule for compensation for damages committed by officials. The state shall not be liable for damage committed by a notary public. <https://www.zakon.hr/z/188/zakon-o-javnom-biljeznstvu>, last visited July 30, 2026. Article 34 para. 1 of the Montenegrin Law on Public Enforcement Officers states that a public enforcement officer is personally liable with all his property for any damages caused through unlawful and improper

A distinction should be made between the aforementioned forms of supervision and liability, as they are frequently confused in practice. We mentioned that supervision could be delegated to different bodies. When it comes to liability, certain forms of liability are established in different types of proceedings and should not be confused. The Supreme Court pointed this out in its decisions and interpretations. Civil liability for damages caused by a public enforcement officer in exercise of his public powers is established in the civil proceedings initiated by a claim brought by the injured party. The existence of disciplinary liability does not constitute an interlocutory issue in civil proceedings brought by an injured party against the public enforcement officer. The public enforcement officer is indeed liable for any damages caused in the course of enforcement or securing of claims proceedings, but he is also subject to disciplinary liability. Disciplinary liability is established in disciplinary proceedings conducted by the Disciplinary Commission, and administrative dispute proceedings can be initiated against the Disciplinary Commission's decision. By contrast, the public enforcement officer's civil liability can be established only in civil proceedings.¹⁸

4. PUBLIC ENFORCEMENT OFFICER'S LIABILITY FOR DAMAGES CAUSED THROUGH UNLAWFUL AND IMPROPER WORK

Article 35 para. 2 of the Constitution of the Republic of Serbia states that everyone has the right to compensation for material or non-material damage inflicted on him by unlawful or improper work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government. The law stipulates conditions under which the injured party can demand compensation for damage directly from the person that inflicted the damage (Art. 35 para. 3 Constitution). According to Article 172 para. 1 of the ZOO, a legal person is liable for injury or loss caused to a third party by its governing body in performing or in connection with performing its functions. Unless otherwise specified by law for a specific case, a legal person is entitled to recover against a person being at fault for injury or loss with intent or by gross negligence (Art. 172 para. 2 ZOO).

work in the enforcement proceedings, and para. 2 states that the state is not liable for damage committed by a public enforcement officer: <https://www.javni-izvrsitelji.me/>, last visited July 30, 2026.

¹⁸ The legal interpretation adopted at a session of the Civil Department of the Supreme Court of Cassation of 11 December 2018. <https://www.vrh.sud.rs/sr/>, last visited July 23, 2026.

It follows from the cited constitutional provisions that the right to compensation for damage caused by the unlawful and improper work of a state body or entities exercising public powers is exercised against the Republic of Serbia, while the law prescribes the conditions under which an injured party can demand compensation for damage directly from the person that inflicted the damage. In this context, it is important to distinguish between judges and entities exercising public powers in civil proceedings (the public enforcement officers and the notaries public).

The Republic of Serbia is liable for damages caused by a judge through unlawful or improper work (Art. 7 para. 1 ZS).¹⁹ If the Republic of Serbia is obliged by a final judgment to pay damages caused by a judge through unlawful or improper work, it may demand that the judge reimburse the compensation paid only if the damage was caused intentionally (Art. 7 para. 2 ZS). The same goes if the Republic of Serbia is obliged to pay for damages by a decision of the Constitutional Court, a decision of the European Court of Human Rights, or a decision of another international court (Art. 7 para. 3 ZS). The Republic of Serbia exercises the right of recourse in civil proceedings initiated by the State Attorney's Office against a judge. Before initiating the civil proceedings, the State Attorney's Office is required to seek the opinion of the High Judicial Council, which is composed predominantly of judges (Art. 7 para. 4 ZS).

In contrast to the aforementioned statutory provisions, in the case of public enforcement officers and notaries public, a claim for compensation for damages caused in the course of their work is brought directly against them. Unlike judges, they do not enjoy civil immunity.²⁰ Furthermore, the

¹⁹ Zakon o sudijama (Law on Judges) – ZS, *Official Gazette of the RS* 10/2023, 9/2026 and 56/2026.

²⁰ In one case, on 8 August 2008, the plaintiff filed a claim in the Second Municipal Court in Belgrade against the Republic of Serbia – the Ministry of Justice, and several judges of the Municipal Court in Pančevo, the District Court in Pančevo, and the Supreme Court of Serbia. The plaintiff requested that the court order the defendants to pay him jointly and severally the amount of RSD 9.900,00, as compensation for non-material damages to reputation and violations of rights of personality, together with statutory default interest from the date of judgment until the day of collection, as well as the costs of the civil proceedings. The plaintiff alleged that the defendants had caused damages to the plaintiff by holding a meeting attended by the President of the Supreme Court of Serbia, the President of the Civil Department of that Court, and the President of the Second Municipal Court in Belgrade, together with the representative of the then defendant, the Ministry of Defense. In this meeting, the general position was reached that “the plaintiff was not entitled to compensation for damages” on the ground that his salary in the Serbian Armed Forces had been paid regularly. In ruling P 4163/2008 of 16 September 2008, the Second Municipal Court in Belgrade dismissed the claim as inadmissible. In the reasoning, it was

statutory provisions explicitly state that the Republic of Serbia is not liable for any damages caused by a public enforcement officer or notary public (Art. 498 para. 2 ZIO; Art. 58 para. 4 ZJB).

To establish a public enforcement officer's liability for damages caused in the exercise of his public powers, the damages must be caused by unlawful or improper work. The Republic of Serbia is liable for damages caused by a judge through unlawful or improper work. Regardless of whether the damages were caused by a judge or a public enforcement officer, the exercise of the right to compensation for damages against the Republic of Serbia or directly against the public enforcement officer requires a finding that the damages resulted from unlawful or improper work. There is no uniformity in judicial practice on this issue. This has been pointed out by the Supreme Court (of Cassation).

In judgment Rev 1947/2021, the Supreme Court of Cassation addressed disputed legal issues. Initially, civil proceedings were initiated seeking compensation for investments made in a residential building. In the judgment, the Basic Court in Pančevo rejected the entire claim as ill-founded. Upon deciding on the plaintiff's appeal, the Appellate Court in Belgrade reversed the Basic Court in Pančevo's judgment and obliged the defendant to pay a specified amount of money for the aforementioned investments. The plaintiff filed a motion for enforcement based on an enforceable document – the aforementioned judgment. A writ of execution was issued, based on which the public enforcement officer adopted a conclusion of enforcement on immovable property, more specifically, the aforementioned residential building. The public enforcement officer appraised the immovable property, a public auction was held, the immovable property was awarded to the buyer, and the conclusion on awarding the immovable property was adopted. However, the judgment of the Supreme Court of Cassation reversed the judgment of the Appellate Court in Belgrade, based on which enforcement was ordered and carried out. The enforcement debtor (the

stated that the claim was inadmissible for lack of a legal interest. Additionally, the legal position adopted at the session of the Civil Department of the Supreme Court of Serbia, held on 15 March 2007, established that, pursuant to international standards, the Constitution, and the Law on Judges, the right to seek compensation for damages directly from judges is not suitable for judicial protection. Acting upon the appeal lodged by the applicant in the constitutional complaint, in its contested ruling Gž. 12054/2008 of 23 October 2008, the District Court in Belgrade rejected the appeal as ill-founded and confirmed the ruling P 4163/2008 of 16 September 2008 by the Second Municipal Court in Belgrade. In decision Už-1350/2008 of 4 February 2010, the Constitutional Court held that the Second Municipal Court in Belgrade and the District Court in Belgrade had correctly dismissed the claim against the defendant judges.

defendant in the civil proceedings) filed a motion for counter-enforcement based on the fact that the enforceable document had been finally reversed. However, during the counter-enforcement proceedings, it was established that the enforcement creditor (the plaintiff in civil proceedings) did not own any movable or immovable property, his accounts were blocked, and he had transferred his sole proprietorship to another person. Due to the inability to recover his claim in counter-enforcement proceedings, the enforcement debtor filed a claim against the Republic of Serbia seeking compensation for damages caused by actions and decisions of the judges adjudicating the case. The court of first instance rejected the claim, and that decision was confirmed by the court of second instance. Upon deciding on review of the second instance judgment, the Supreme Court concluded that the review was ill-founded. In the reasoning, the Supreme Court stated that liability for damages caused by a judge arises where the damage has resulted from unlawful (conduct contrary to the law or other regulation, or failure to apply the law or regulation) or improper work of a judge (performance or omission contrary to the usual manner of conducting the activity, which violates the rights and interests of a person). Therefore, conduct that is in accordance with the law or carried out within the scope of the relevant authority's powers cannot constitute unlawful or improper work. Even the incorrect application of the relevant statutory provision or an erroneous assessment of whether the conditions for adopting a particular decision have been met does not, in itself, constitute a breach of duty in the performance of their functions for which the state should be liable. The Constitution of the Republic of Serbia guarantees autonomy and independence of judges, namely, the right to express an opinion when rendering a decision, for which a judge cannot be held liable in any way. Taking the above arguments into consideration, the claim was correctly rejected as unfounded, given that it had not been established that the state bodies had acted unlawfully.²¹

²¹ Supreme Court of Cassation, Judgment, Rev 1947/2021 of 26 May 2021. By contrast, if a court fails to exercise the statutory powers available to it, this may constitute unlawful and improper conduct on the part of the court and give rise to liability for damages caused to the parties in the enforcement proceedings. When there is a clear disproportion between the value of the enforcement debtor's sold property and the amount of the claim of the enforcement creditor, and the enforcement debtor suggested other means and objects of enforcement that are sufficient for settlement of the claim of the enforcement creditor, a breach of the principle of proportionality in such circumstances constitutes unlawful and improper conduct on the part of the court for which the Republic of Serbia is liable. Furthermore, the court is required to ensure compliance with the principle of proportionality (Supreme Court of Cassation, Judgment, Rev 4947/2018 of 22 February 2019).

In support of the position adopted by the Supreme Court (of Cassation), it is necessary to point out the relevant constitutional and statutory provisions. Article 144 para. 1 of the Constitution states that a judge is independent and adjudicates based on the Constitution, ratified international treaties, laws, generally accepted rules of international law, and other general acts, adopted in accordance with the law. A judge is free in holding his views, determining facts, and applying law in all matters under his deliberation (Art. 22 para. 1 ZS). A judge is not required to justify to anyone, even other judges and/or the president of the court, his understanding of the law and the facts found, except in the reasoning of the judgment or when particularly stipulated so by law (Art. 22 para. 2 ZS). It follows from the aforementioned constitutional and statutory provisions that the judge's conduct cannot be regarded as unlawful or improper if he has a different understanding of the law, or if he applies an incorrect statutory provision to a particular set of circumstances, or where the applicable statutory provision is applied incorrectly.

The judgment of the Supreme Court in case Rev 1028/2025 makes it clear that the aforementioned principles concerning unlawful and improper conduct of a judge also apply to the conduct of public enforcement officers. A public enforcement officer exercises the delegated public powers in the enforcement and securing of claims proceedings; namely, he exercises part of the jurisdiction that was previously within the courts' jurisdiction. A public enforcement officer will perform his duty professionally, in accordance with the law and other general acts, so that through his work and behavior he justifies and strengthens the trust of parties, citizens, courts, and other state bodies (Art. 494 ZIO; Art. 5 Code of Ethics of Public Enforcement Officers).²² When performing actions within the scope of his powers and duties, the public enforcement officer is obliged to comply with the Constitution, laws, and other general acts (Art. 10 Code of Ethics of Public Enforcement Officers). It follows that the public enforcement officer cannot be held liable for having a different understanding of the law or the application of the statutory provisions. The public enforcement officer's decisions and actions are subject to judicial review through legal remedies and other legal means. Under the ZIO and the ZPP, the court adjudicating the legal remedy can confirm, repeal, or reverse those decisions. The court can also cancel enforcement actions already taken by the public enforcement officer. Repealing or reversing the public enforcement officer's decisions, or canceling his enforcement actions on the grounds provided by law, is not enough to constitute unlawful or improper work of the public enforcement officer and, consequently, liability for damage within the meaning of Article

²² Etički kodeks javnih izvršitelja (Code of Ethics of Public Enforcement Officers), *Official Gazette of the RS* 105/2016.

498 para. 1 ZIO. The powers of a public enforcement officer are prescribed by the ZIO and may also be prescribed by a separate law. If the public enforcement officer renders decisions and takes actions in accordance with law, he cannot be held liable for his legal understanding, even when a court has reversed or repealed the public enforcement officer's decision or canceled any of his actions.

5. IN LIEU OF A CONCLUSION

A person who received a degree from the Faculty of Law, passed the bar exam, passed the public enforcement officer license exam, has at least two years of professional experience in legal affairs after having passed the bar exam, and meets all other criteria set out in Article 471 of the Law on Enforcement and Securing of Claims, can be appointed as a public enforcement officer. These criteria also include completing the initial training, the program and duration of which are prescribed by the Chamber of Public Enforcement Officers. For comparison, a person who obtained a degree from the Faculty of Law and passed the bar exam, and has at least three years of professional experience in legal affairs after having passed the bar exam, and meets all other criteria set by the Law on Judges, qualifies for appointment as a judge of a basic court. The difference is that the public enforcement officer must have at least two years of professional experience in legal affairs after having passed the bar exam. However, in addition to having passed the bar exam, the public enforcement officer is also required to pass the separate exam for public enforcement officers (Bodiroga 2026, 663).

One of the most important duties of a public enforcement officer is the duty of continuing professional development. A public enforcement officer must undergo regular professional training (Art. 499 para. 1 ZIO). The Chamber of Public Enforcement Officers keeps attendance records for regular professional training and other forms of professional development (Art. 499 para. 2 ZIO). The Chamber also prescribes the curriculum for professional development (Art. 499 para. 3 ZIO). The Chamber keeps attendance records for the initial and regular professional trainings, and notifies the Ministry of Justice (Art. 499 para. 5 ZIO). A public enforcement officer is obliged to constantly monitor regulations, judicial and public enforcement officer practice, as well as to renew, improve and expand his legal and general education without neglecting any area of law (Art. 5 para. 2 Code of Ethics of Public Enforcement Officers). Unjustified refusal of professional training constitutes a severe disciplinary infraction (Art. 527 para. 1 it. 22 ZIO).

Legal scholars emphasize that when the tortfeasor practices a profession that requires professional education and practical training, that tortfeasor is subject to the rules governing professional liability (Karanikić Mirić 2024, 542).²³ In the case of public enforcement officers, it is necessary to establish whether they acted in accordance with the public powers delegated to them, mainly, whether such conduct was in accordance with the laws and other provisions governing their work. If a public enforcement officer rendered decisions and took actions in accordance with law, bylaws, and respected duties prescribed by the ZIO and separate laws, this cannot constitute unlawful or improper work, even when his decisions are confirmed, repealed, or reversed. A public enforcement officer has a right to his own understanding of the law, namely, the right to his own interpretation of the statutory provisions applied in specific enforcement proceedings. The court's different understanding of the law in the second instance proceedings does not imply that the public enforcement officer's work was unlawful or improper, nor can liability of the public enforcement officer be established pursuant to Article 498 para. 1 ZIO.

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²³ The duty of care of a good expert is mentioned in Article 18 para. 2 ZOO. In accordance with the aforementioned statutory provision, in carrying out obligations relating to his professional activity, a party to an obligation relation must act with increased care, in line with professional rules and usage (duty of care of a good expert).

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