

**Bukazić Dejan\***

<https://orcid.org/0009-0000-4047-6028>

**Zarubica Sara\*\***

<https://orcid.org/0000-0003-4314-9078>

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## COMPENSATION FOR DAMAGE RESULTING FROM THE UNLAWFUL CONDUCT OF PUBLIC ENFORCEMENT OFFICERS


**ABSTRACT:** The liability of public enforcement officers for damage caused by unlawful conduct is grounded in constitutional guarantees, standards of professional care, and the rules of the law of obligations. The right to compensation for damage derives from the principle of the rule of law and the state's duty to ensure the effective enforcement of court decisions, applying a heightened standard of care inherent to holders of public authority. The current legal framework provides for the personal and unlimited liability of enforcement officers, while excluding state liability, which raises questions regarding its compatibility with legal certainty and the case law of the European Court of Human Rights. As a sustainable solution, strengthening professional standards, mandatory professional liability insurance, and the subsidiary liability of the state in exceptional cases are proposed.

**Keywords:** *liability of public enforcement officers, compensation for damage, constitutional guarantees, tort liability, enforcement procedure, legal certainty, subsidiary state liability.*

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\*LLM, PhD Candidate, Attorney-at-Law in Pančevo, Serbia, e-mail: [adv.bukazic@gmail.com](mailto:adv.bukazic@gmail.com)

\*\*LLD, Research Associate, Ministry of Internal Affairs of the Republic of Serbia, Belgrade, Serbia, e-mail: [pocucamsara@gmail.com](mailto:pocucamsara@gmail.com)

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## 1. Introduction

The institution of public enforcement officers represents one of the most significant contemporary solutions in Serbian positive enforcement law, introduced with the aim of enhancing efficiency and legal certainty in the process of compulsory claim enforcement. The introduction of this judicial profession contributes to strengthening the confidence of investors, citizens, and the business community in the effectiveness of claim recovery (Vojvodić, 2023, p. 31). By delegating public powers to private individuals, a hybrid model has been established in which public enforcement officers, as holders of public authority and subjects of private law, contribute to relieving the courts and improving enforcement efficiency, while simultaneously raising questions regarding their civil liability.

The constitutional order of the Republic of Serbia, based on the rule of law and legal certainty, guarantees the right to compensation for damage caused by the unlawful conduct of holders of public authority as a key mechanism for the protection of individuals, supplemented by the rules of obligations law concerning unlawfulness, causation, and the heightened standard of care of a diligent professional.

The court and public enforcement officers constitute the fundamental bodies of enforcement and security proceedings in domestic enforcement law (Crnjanski, 2024, p. 37). Private-law institutions must not conflict with the public interest, while public law may, in justified cases, intervene in private legal relations in order to guide and regulate them (Milojević, 2020, p. 56). A legal norm has value only when it expresses moral values (Trajković & Drakić, 2024, p. 368). An inefficient enforcement system that fails to provide creditors with legal certainty in realizing guaranteed rights undermines not only individual confidence but also the legal order of the state (Vavan, 2013, p. 227).

In legal theory, the prevailing view is that the civil liability of members of legal professions, such as attorneys, public notaries, and public enforcement officers, is largely shaped by case law and legal doctrine, since special regulations and ethical codes predominantly contain general rules and refer to the application of the general principles of tort law (Petrić, 2010, p. 24).

The specificity of the liability of public enforcement officers lies in the exclusion of state liability, despite the constitutional guarantee of the right to compensation for damage, which calls into question the compatibility of such a solution with the Constitution and the standards of the European Court of Human Rights, according to which the state retains ultimate responsibility for the effective enforcement of judicial decisions.

## **2. The Constitutional Basis of Liability**

The Constitution of the Republic of Serbia (2006) is founded on the principles of the rule of law, the protection of human rights, and the guaranteed right to an effective legal remedy. Within this framework, the right to compensation for damage caused by the unlawful or improper conduct of public authorities and holders of public powers represents one of the fundamental instruments of individual legal protection. Protection against arbitrary, unlawful, or negligent conduct by state entities and persons acting in the public interest forms part of the broader constitutional concept of responsible and transparent governance.

Article 35 of the Constitution of the Republic of Serbia (2006) explicitly guarantees the right of every person to seek compensation for material and non-material damage caused by the unlawful or improper conduct of a state authority, a holder of public powers, or a local self-government body. In this way, constitutional protection goes beyond the classical model of state liability, as it also applies to legal and natural persons entrusted with public powers, including public enforcement officers.

The normative structure of this constitutional provision is based on several key premises: (1) an injured person must not be left without legal protection merely because a public function is exercised by a private entity; (2) the guarantee of compensation has both preventive and reparative functions; and (3) the liability of holders of public powers constitutes an extension of state liability, since the public function retains its public-law character regardless of the entity performing it.

Article 137 of the Constitution of the Republic of Serbia (2006) provides that, in the interest of more efficient and rational exercise of the rights and obligations of citizens and the satisfaction of their needs of immediate importance for life and work, the performance of certain tasks within the competence of the Republic of Serbia may be entrusted by law to an autonomous province or a unit of local self-government. Furthermore, the same provision stipulates that certain public powers may also be entrusted by law to enterprises, institutions, organizations, and individuals. In accordance with this constitutional framework, public powers relating to the conduct of enforcement proceedings have been entrusted to public enforcement officers.

## ***2.1. Public Enforcement Officer as a Holder of Public Powers***

A public enforcement officer acts in the capacity of a holder of delegated public powers, performing actions that traditionally fell within the jurisdiction of the courts. Unlike public notaries, who are defined as a service of public trust, enforcement officers are vested solely with public powers (Nikolić, Sibinović, Počuča & Šarkić, 2020, p. 243). A public enforcement officer is an out-of-court, non-state judicial authority competent to decide on and carry out enforcement (Stanković & Trgovačević Prokić, 2020, p. 71). Although organizationally and status-wise a subject of private law, the function performed by the enforcement officer within the enforcement system undoubtedly has a public-law character. Consequently, public enforcement officers occupy a specific position of constitutional liability, distinct from the classical professional liability of private actors.

The constitutional framework governing their position allows for the application of the same standards of liability applicable to state authorities, including the duty of legality and professionalism, the protection of the rights of parties to the proceedings, and the obligation to compensate for damage caused by unlawful conduct. This ensures continuity of legal protection, such that the delegation of enforcement functions cannot lead to a reduction in liability standards compared to the traditional, court-based model of enforcement.

## ***2.2. Constitutional Conflict and the Limits of the Statutory Exclusion of State Liability***

The Law on Enforcement and Security (2015) contains a provision in Article 498, paragraph 2, which releases the state from liability for damage caused by the fault of a public enforcement officer. Such a statutory solution raises a constitutional question: whether the legislator is authorized to restrict the constitutional right to compensation for damage by entirely excluding state liability. Starting from the supremacy of the Constitution and the nature of constitutional guarantees, it is clear that the legislator does not have discretionary power to derogate from the essential content of a constitutional right. The state cannot fully absolve itself of responsibility for the effectiveness of enforcement of judicial decisions by delegating public functions to private entities, nor may it allow a situation in which the injured party is left in a legal vacuum due to the potential unenforceability of the liability of a public enforcement officer.

In practice, this issue gains an additional dimension in light of the standards of the European Court of Human Rights, according to which the state retains ultimate responsibility for ensuring the effective enforcement of judgments and the protection of individual rights. This necessitates a different interpretation of the statutory exclusion of state liability—not as absolute, but as an institute whose application must be aligned with constitutional law and the international obligations of the Republic of Serbia.

### **3. The Obligations-Law Basis of the Liability of Public Enforcement Officers**

Civil liability implies an obligation to compensate for damage caused by one legal subject to another (Radovanov, 2009, p. 229). The civil liability of public enforcement officers is based on the general rules of obligations law governing liability for damage, supplemented by special rules arising from the nature of the delegated public function. Unlike classical subjects of private law, public enforcement officers perform a professional activity in the public interest, subject to heightened standards of care, responsibility, and transparency. Public enforcement officers are liable in cases of ordinary negligence, that is, for conduct contrary to the legal standard of the care of a diligent professional. The content of this heightened standard of care is determined in accordance with the rules of the profession and prevailing professional customs (Nikolić, 2002, p. 248). Liability of enforcement officers also exists where damage is caused by gross negligence or intent (Ampovska, 2018, pp. 296–297). Unlike other professions, the relationship between the parties is not contractual in nature, and the conduct of public enforcement officers is strictly governed by the principle of formal legality (Krstić, 2017, p. 205).

Persons engaged in a professional activity are expected to act in accordance with the rules of their profession, with full knowledge and application of professional standards, while their rights and responsibilities are regulated by special legislation (Jug, 2012, p. 444). The civil liability of public enforcement officers is further reinforced by the obligation to conclude insurance against damage arising from the performance of their professional activities vis-à-vis parties and third persons (Jakšić, 2022, p. 896).

Real rights protection is primarily aimed at restoring the injured party's property status to its condition prior to the violation of rights (*restitutio in integrum*), and only where this is not possible, at compensation for the value of the property in the form of monetary restitution (Tasić & Lazić, 2024, p.

35). Serbian obligations law bases liability for damage on presumed fault and a causal link between the unlawful act and the damage incurred. In the case of public enforcement officers, liability is predominantly classified as tortious, as it arises from the breach of a general statutory duty to act in accordance with the law and professional standards, rather than from a contractual relationship with the injured party. The liability of a public enforcement officer is triggered only when the following elements are cumulatively fulfilled: (1) an unlawful act or omission; (2) the occurrence of damage; (3) a causal link; and (4) fault on the part of the enforcement officer.

Such a concept of liability ensures legal protection for individuals even in situations where they are not in an obligations relationship with the enforcement officer, but nevertheless suffer the consequences of the officer's unlawful conduct in the exercise of the delegated public function.

#### **4. Standard of due care of a competent professional**

As a professional, a public enforcement officer is obliged to exercise a heightened standard of the care of a diligent professional, accompanied by a higher degree of liability, from which he or she may be released only in cases of slight negligence (Nikolić & Šarkić, 2022, p. 873). Stricter standards apply to public enforcement officers than to ordinary participants in legal transactions. As professionals performing a delegated public function, they are required to act with due care, in accordance with the rules of the profession, ethical norms, and the law. In this context, the standard of the "care of a diligent professional" implies a higher level of responsibility than the standard of the care of a prudent person, which applies in the general obligations regime.

This standard includes: knowledge of relevant legislation and case law; correct application of substantive and procedural law; professional and impartial treatment of parties; adequate organizational and technical capacity of the office; and the obligation to act diligently and in a timely manner. A breach of these duties constitutes grounds for liability and simultaneously serves as a criterion for assessing fault in civil proceedings for compensation for damage.

The existence of liability of a public enforcement officer is assessed according to the standard of a reasonable, careful, and professionally competent enforcement officer acting under the same circumstances (Masnikosa, 2020, p. 79).

## **5. Subjects of liability and scope of the damages claim**

A public enforcement officer is liable for damage with his or her entire property, which confirms the private-law character of such liability. This liability is not limited by the amount of insurance coverage, nor by the existence of disciplinary liability, which exists independently of civil liability.

The existence and scope of the civil liability of a public enforcement officer for damage caused in the exercise of public powers in enforcement or security proceedings are determined, upon the claim of the injured party, in proceedings conducted by the competent court in accordance with the rules of civil procedure. The existence of disciplinary liability does not constitute a preliminary issue in civil proceedings for establishing the civil liability of a public enforcement officer for compensation of damage<sup>1</sup> (Supreme Court of Cassation, 2018).

The liability of a public enforcement officer also extends to damage caused by the actions of his or her deputy or assistant (Stanković, Palčaković & Trešnjev, 2022, p. 1583). For damage caused by a deputy public enforcement officer, liability is borne jointly and severally by both the public enforcement officer and the deputy. Likewise, they are jointly and severally liable for damage caused by third parties, namely persons to whom the enforcement officer has lawfully delegated certain tasks. Joint and several liability means that the injured party may claim full compensation from any of the jointly liable debtors, while their internal relations are resolved through recourse in proportion to their contribution to the occurrence of the damage. For damage caused by assistants of a public enforcement officer, the public enforcement officer is liable as an employer under the principle of vicarious liability. Liability for damage caused by employees in the course of or in connection with work to third parties implies that the public enforcement officer is exclusively liable for such damage. However, this also entails the right of the public enforcement officer, as an employer, to seek recourse from the person whose conduct caused the damage, for the amount paid to the injured third party. This matter is regulated by Articles 170 and 171 of the Law on Obligations (1978), and pursuant to Article 171, paragraph 3 of the same Law, the right of recourse becomes time-barred within six months from the date of payment of the compensation.

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<sup>1</sup> Legal Position of the Civil Law Department of the Supreme Court of Cassation, adopted at the session held on 11 December 2018.

In proceedings for compensation of damage, the party alleging that damage has been suffered bears the burden of proving the existence of damage, a causal link, and the unlawful conduct of the enforcement officer. The burden of proof constitutes a significant procedural obstacle, particularly in situations where it is necessary to establish a causal connection between a procedural action of the public enforcement officer and the damage incurred.

Disciplinary proceedings are not a prerequisite for civil liability; however, the existence of disciplinary liability may have evidentiary significance in civil litigation, thereby confirming the autonomy of the civil liability of public enforcement officers.

## **6. Legal Framework and the Exclusion of State Liability (Article 498 of the Law on Enforcement and Security)**

The normative regime governing the liability of public enforcement officers in the Republic of Serbia is based on a combination of the general rules of obligations law, specific provisions of the Law on Enforcement and Security (2015, hereinafter LES), and professional standards prescribed by competent authorities and the Chamber of Public Enforcement Officers. A central place within this framework is occupied by Article 498 of the LES, which explicitly excludes the liability of the Republic of Serbia for damage caused by a public enforcement officer through fault in enforcement or security proceedings. By adopting this provision, the legislator opted for a model of full personal proprietary liability of public enforcement officers, coupled with the complete withdrawal of the state from the sphere of compensation for damage in such cases. The current framework thus provides for the personal and unlimited liability of public enforcement officers, while excluding state liability, which in practice entails the absence of subsidiary state liability and the risk of unenforceable compensation claims, rendering this solution constitutionally sensitive.

An action for damages against a public enforcement officer cannot substitute the system of legal remedies provided by the LES (Bodiroga, 2023, p. 178). Article 498 of the LES is based on the concept that the delegation of public powers to a private individual does not transfer to the state liability for the consequences of that individual's fault. However, such a statutory solution must also be examined in light of the constitutional guarantee of the right to compensation for damage (Article 35 of the Constitution), the principle of an effective legal remedy, and the international obligations of Serbia, particularly in the field of enforcement of judicial decisions. From the perspective of the constitutional order, the exclusion of state liability cannot be absolute, as

this would otherwise derogate citizens' right to legal protection, especially in situations where the injured party is unable to recover damages from the enforcement officer. This gives rise to the question of a potential constitutional conflict between Article 498 of the LES and Article 35 of the Constitution.

The state is obliged to provide public enforcement officers with the necessary conditions for undertaking direct enforcement actions in accordance with the law (Trešnjev, 2018, p. 397).

## **7. State Liability in the Light of European Standards and the Case Law of the European Court of Human Rights**

The model of public enforcement in contemporary legal systems involves the delegation of public powers to private individuals while retaining the ultimate responsibility of the state for the effective enforcement of final court decisions. This principle derives from the convention-based standards of human rights protection and the case law of the European Court of Human Rights (ECtHR), according to which the state is obliged to ensure an effective mechanism for the enforcement of judicial decisions as an integral component of the right to a fair trial under Article 6 of the European Convention on Human Rights. In the Republic of Serbia, the right to a fair trial has also been elevated to the level of a constitutional principle, as Article 32 of the Constitution guarantees the right to a fair hearing. The enforcement of a judgment (enforceable title) constitutes an integral element of the right to a hearing within a reasonable time (Milutinović, 2016, pp. 172–173).

The ECtHR consistently emphasizes that the right to a fair trial is not limited to the adjudicatory phase, but also encompasses the state's obligation to ensure the execution of judicial decisions. The right to a hearing within a reasonable time implies the right of the parties to an efficient and expeditious procedure, excluding unnecessary delays and requiring compliance with time limits prescribed by national procedural law (Milenković, 2019, p. 170). Otherwise, justice remains merely declaratory and ineffective. The enforcement of judgments therefore represents an integral component of the right of access to justice and legal certainty, which is why the state, even when entrusting enforcement to private entities, retains subsidiary responsibility for the outcome of the proceedings.

The state bears responsibility where it has failed to take effective measures enabling enforcement officers to perform their duties and thereby ensure the compulsory execution of court decisions (Pini and Others v. Romania, Application No. 78030/01). One of the means of guaranteeing the effectiveness

and credibility of judicial systems is ensuring that cases are resolved within a reasonable time (*H. v. France*, 1989, Application No. 10073/82). It should be noted that delays in enforcement are particularly relevant to violations of the right to a hearing within a reasonable time; while certain delays may be acceptable for a limited period, they must not undermine the very essence of the right of access to a court (*Burdov v. Russia*, Application No. 59498/00, judgment of 7 May 2002). The ECtHR has clarified that enforcement has autonomous value regardless of the nature of the enforcement order and the preceding judicial proceedings (*Estima Jorge v. Portugal*, Application No. 16/1997/800/1003, judgment of 21 April 1998). Enforcement proceedings do not serve solely to secure payment of an adjudicated amount, but also regulate essential elements of the debt itself; they are therefore regarded as a continuation of the initial proceedings and taken into account when calculating the overall length of the proceedings (*Silva Pontes v. Portugal*, Application No. 14940/89, judgment of 23 March 1994). Enforcement proceedings thus constitute an integral part of the “trial” within the meaning of Article 6 §1 of the Convention (*Hornsby v. Greece*, Application No. 18357/91, judgment of 19 March 1997). It is the duty of states to organize their legal systems in such a manner as to enable courts to comply with the requirements of Article 6 of the Convention, including the right to a hearing within a reasonable time (*Zimmermann and Steiner v. Switzerland*, Application No. 8737/79, judgment of 13 July 1983). The Court does not prescribe specific means for achieving this objective, as this does not fall within its function; rather, states enjoy discretion in organizing their legal systems and selecting measures to ensure compliance with Convention guarantees (*Belilos v. Switzerland*, Application No. 10328/83, judgment of 29 April 1988). Delays in the enforcement of judgments may be justified only in exceptional circumstances and only insofar as they do not impair the very substance of the right protected under Article 6 §1 of the Convention (*Immobiliare Saffi v. Italy*, Application No. 22774/93, judgment of 28 July 1999). The assessment of whether proceedings have been conducted within a reasonable time must be carried out on a case-by-case basis, taking into account the specific circumstances of each case and the criteria developed in the Court’s case law (*Pretto and Others v. Italy*, Application No. 7984/77, judgment of 8 December 1983). Rights guaranteed by the Convention are illusory if a domestic legal system allows a binding judicial decision to remain ineffective, thereby causing harm to the individual party to the dispute (*Raylyan v. Russia*, Application No. 22000/03, judgment of 15 February 2007).

The case law of the ECtHR thus confirms that the delegation of public powers to private entities does not absolve the state of its duties of regulation,

supervision, intervention, and the guarantee of compensation for damage, whereby the state retains ultimate responsibility for the enforcement system.

## **8. Critical Review and De Lege Ferenda Proposals**

The normative framework governing the liability of public enforcement officers is designed in such a way that the state is exempted from liability for damage caused by a public enforcement officer through fault. At the same time, the Law on Enforcement and Security (LES) provides for the obligation to conclude a contract of professional liability insurance. Such a dual model—full personal liability of the enforcement officer combined with mandatory professional insurance—should, at least in theory, ensure full reparation for injured parties.

The Rulebook on General Conditions for Concluding Insurance Contracts for Public Enforcement Officers (2016) stipulates in Article 3 that, under an insurance contract, a public enforcement officer is insured against liability for damage caused to another person as a result of an error arising from an act or omission of the enforcement officer in the performance of professional activities, as well as for damage to the enforcement officer's premises and to items received into deposit, where such damage is caused to another person through damage, destruction, or loss of the items. The insurance contract shall, in particular, include: (1) the duration of insurance coverage (coverage period), which amounts to 12 months; (2) the types of insured risks, which, under the general insurance conditions, constitute customary risks, such as burglary and robbery, fire, flood, or the consequences of other natural disasters; (3) the insured sum per insured event for the entire coverage period, which amounts to: (a) in the case of liability insurance of a public enforcement officer, at least EUR 100,000 in dinar countervalue at the middle exchange rate of the National Bank of Serbia applicable on the date of conclusion of the insurance contract; (b) in the case of insurance of the public enforcement officer's premises, at least EUR 20,000 in dinar countervalue; and (c) in the case of insurance of items received into deposit by the public enforcement officer, at least EUR 30,000 in dinar countervalue. Liability insurance of a public enforcement officer also covers liability for errors committed by the deputy enforcement officer, assistants, employees of the enforcement officer, and persons who, on behalf and for the account of the enforcement officer, carry out certain enforcement or security actions.

However, the relatively low minimum insured amounts—often disproportionate to the actual value of potential damage in enforcement

proceedings, particularly in cases involving immovable property or complex proprietary relations—as well as the possibility that total damage exceeds the insured sum, shift the burden back onto the enforcement officer personally and create a risk of unenforceability of compensation claims. The LES normatively releases the state from any liability for damage caused by the fault of a public enforcement officer. Nevertheless, the state remains the ultimate guarantor of the effective enforcement of judicial decisions. Consequently, the complete exclusion of any form of subsidiary state liability gives rise to a potential constitutional conflict (Article 35 of the Constitution), a convention-based conflict (Article 6 of the European Convention on Human Rights), and a legal vacuum, as injured parties may find themselves unable to obtain reparation despite the fact that the damage arose in the exercise of public authority. In cases of insolvency of the enforcement officer or where the insurance policy does not cover the damage, the injured party effectively remains without protection.

This is particularly problematic given that public enforcement officers act in the public interest, that enforcement proceedings constitute a continuation of judicial proceedings, and that injured parties may reasonably expect the state to guarantee a minimum level of legal certainty. Such a normative model creates a real risk of violating the principles of legal certainty and effective legal remedy. It should also be noted that, in addition to mandatory insurance, public enforcement officers may conclude additional liability insurance at their own discretion, taking into account standards of professional conduct (Vavan, 2022, p. 57).

### ***8.1. De lege ferenda Proposals***

In order to improve the normative and functional system of liability of public enforcement officers, and thereby enhance the level of legal certainty, it would be advisable to introduce a clear model of subsidiary state liability. The state should bear subsidiary liability in limited and clearly defined situations, such as: where the enforcement officer lacks sufficient assets; where insurance coverage does not cover the damage; where damage results from systemic failures of the state in supervision; and in cases involving violations of the Convention rights of the parties. Following compensation, the state should retain a right of recourse against the enforcement officer.

Furthermore, it is necessary to increase the minimum mandatory insurance amounts and to more precisely define the scope of insured risks. This is particularly justified given the continuous increase in the value of

property, while the currently prescribed minimum insurance sums were established by a rulebook adopted in 2016. Minimum insurance amounts should be increased, especially for enforcement actions involving immovable property; the minimum scope of risks that insurance policies must cover should be prescribed, without allowing insurers to undermine the purpose of regulation through exclusions; and the continuous maintenance of insurance coverage should be established as a condition for performing the enforcement profession. In this way, insurance would acquire a genuine, rather than merely declaratory, role as a mechanism for protecting the rights of parties, public enforcement officers, the state, and ultimately, legal certainty itself.

## **9. Conclusion**

The liability of public enforcement officers for damage caused by unlawful or improper conduct constitutes one of the key issues of contemporary enforcement law, as it lies at the intersection of constitutional guarantees, the public-law nature of their activities, and the tort principles of obligations law. Although the introduction of public enforcement officers has contributed to more efficient enforcement and the alleviation of the courts' workload, the delegation of public powers to private individuals has raised complex questions regarding the scope of their liability and the role of the state as the ultimate guarantor of legal protection. The constitutional order of the Republic of Serbia guarantees the right to compensation for damage caused by the unlawful conduct of holders of public authority, thereby confirming that entrusting enforcement to private entities cannot diminish standards of legal certainty. The civil liability of public enforcement officers is based on unlawfulness, causation, and fault, combined with the application of a heightened standard of the care of a diligent professional, including liability for the actions of deputies and assistants. However, the statutory exclusion of state liability, together with limited professional insurance coverage, creates a risk that injured parties may, in certain cases, be left without effective reparation, calling into question the compatibility of the existing framework with constitutional principles and the case law of the European Court of Human Rights. Consequently, a sustainable model of liability must rest on the personal liability of enforcement officers, complemented by subsidiary and clearly defined state liability in exceptional circumstances, as well as by the strengthening of professional standards and insurance mechanisms. Only such a balanced approach can ensure effective enforcement while preserving legal certainty and trust in the legal order.

### **Conflict of Interest**

The authors declare that there is no conflict of interest.

### **Author Contributions**

Conceptualization, D.B.; methodology, D.B.; formal analysis, D.B. and S.Z.; writing – original draft preparation, D.B., writing – review and editing, S.Z. All authors have read and agreed to the published version of the manuscript.

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Not applicable.

### ***Bukazić Dejan***

Advokat u Pančevu, Pančevo, Srbija

### ***Zarubica Sara***

Ministarstvo unutrašnjih poslova Republike Srbije, Beograd, Srbija

## **NAKNADA ŠTETE ZBOG NEZAKONITOG RADA JAVNIH IZVRŠITELJA**

**APSTRAKT:** Odgovornost javnih izvršitelja za štetu nastalu nezakonitim radom zasniva se na ustavnim garancijama, standardima profesionalne pažnje i pravilima obligacionog prava. Pravo na naknadu štete proizlazi iz načela vladavine prava i obaveze države da obezbedi delotvorno izvršenje sudskih odluka, uz primenu višeg standarda pažnje svojstvenog nosiocima javnih ovlašćenja. Važeći okvir predviđa ličnu i neograničenu

odgovornost izvršitelja, uz isključenje odgovornosti države, što otvara pitanje usklađenosti sa pravnom sigurnošću i praksom Evropskog suda za ljudska prava. Kao održivo rešenje nameće se jačanje profesionalnih standarda, obavezno osiguranje i supsidijarna odgovornost države u izuzetnim slučajevima.

**Ključne reči:** odgovornost javnih izvršitelja, naknada štete, ustavne garancije, delikatna odgovornost, izvršni postupak, pravna sigurnost, supsidijarna odgovornost države.

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