
The Discretionary Powers of Public Enforcement Officers and Their Limits

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Abstract

Discretionary powers of the public enforcement officer represent a limited but significant margin of choice between several legally permitted solutions at the stage of enforcement. They are not systematically and explicitly regulated, but rather arise in a dispersed manner from the provisions of the Law on Enforcement and Security, which leave the enforcement officer with a degree of assessment when selecting the means and objects of enforcement, determining the order and dynamics of enforcement actions, as well as the manner of undertaking auxiliary measures. Due to the intensity of interference with the debtor's property rights, discretionary decision-making is legitimate only if it is strictly confined by the purpose of the proceedings and by the principles of legality, proportionality, and protection of the parties' procedural rights, including the right to a reasoned decision and to a legal remedy. Judicial control ensures verification of whether the decision was made within the limits of the granted powers and supported by reasons that allow the review of legality, thereby preventing arbitrariness. The practical problems observed in the inconsistent application of these powers indicate the need for more precise criteria and a stronger obligation to provide reasoning *de lege ferenda*

Keywords: public enforcement officer, discretionary powers, enforcement proceedings, protection of the parties rights, judicial review.

Introduction

The introduction of the institution of the public enforcement officer into the legal system of the Republic of Serbia represented one of the most significant reform interventions in the field of civil procedural law in the last decade. The primary objective of this reform was to increase the efficiency and effectiveness of enforcement proceedings, relieve the courts of excessive workload, and ensure faster and more reliable realization of recognized and established claims. In this context, the public enforcement officer was conceived as a holder of public powers entrusted with the conduct of enforcement, while enjoying a certain degree of independence in performing these tasks. However, precisely this independence raises important questions regarding the nature and scope of the powers of the public enforcement officer, particularly with respect to the existence and reach of discretionary powers.

In enforcement proceedings, subjective civil rights and obligations are not determined in the same manner as in civil litigation; nevertheless, their realization cannot be conceived without an effective and efficient enforcement procedure (Bodiroga, 2011, p. 194). The right to the enforcement of a court decision must therefore be guaranteed to the same extent as the right to obtain such a decision (Bodiroga, 2012, p. 208).

Unlike traditional judicial decisions, which are more strictly bound by statutory provisions, the actions of the public enforcement officer often involve choosing between several legally permitted options, whether regarding the means and objects of enforcement or the manner in which specific enforcement actions are undertaken. This sphere of decision-making inevitably carries the risk of exceeding the limits of authority and the emergence of arbitrariness if it is not clearly constrained by normative and institutional safeguards.

In domestic legal scholarship, the issue of the discretionary powers of public enforcement officers has not yet been the subject of a separate and systematic analysis. This issue is most often addressed indirectly within broader topics such as the legal status of the public enforcement officer, control over their work, or liability for damages, while discretionary powers themselves remain insufficiently clarified as a distinct legal concept. Consequently, in practice there are uncertainties regarding the distinction between discretionary powers and free evaluation, as well as the limits within which a public enforcement officer may act lawfully and legitimately.

The Concept of Discretionary Powers in Administrative and Procedural Law

Discretionary powers represent a specific form of legal authority in which the legislator leaves a certain margin of decision-making to the competent authority or holder of public powers, allowing them, within the limits set by law, to choose among several legally permitted solutions. Unlike bound powers, where the legal consequence is predetermined and precisely defined by the norm, discretionary powers imply a normatively tolerated flexibility in the application of law.

In contemporary legal theory, discretionary powers are not understood as a space of unlimited freedom of decision-making, but rather as a normative situation in which a public agent, authorized by a competence-conferring norm, chooses between several legally permissible alternatives. The normative framework of discretionary powers is limited and directed, and it must remain subject to the principles of public interest, the rule of law, and other fundamental principles that permeate the legal order (Krešić M., 2025, p. 532).

Starting from the complexity of social relations that legal norms seek to regulate, the legislator deliberately refrains from anticipating every individual situation, instead authorizing the competent authority to assess the concrete circumstances of a case and adopt a decision that most effectively fulfills the purpose of the law. In this sense, discretionary powers serve as an instrument for adapting general legal norms to individual and often unpredictable life situations.

However, discretionary powers do not imply unlimited freedom of action. On the contrary, they are always legally conditioned and restricted by the purpose of the law, the fundamental principles of the legal order, and the obligation to provide reasoning for the decision adopted. These limitations constitute the key distinction between lawful discretionary action and impermissible arbitrariness.

In a state governed by the rule of law, discretionary powers must remain in balance with the fundamental principles of legality, equality before the law, and the protection of the legitimate expectations of the parties. Such powers cannot be used as a means of arbitrary decision-making, but exclusively as a mechanism for achieving the purpose of the law in the most appropriate manner within the legal framework. For this reason, the obligation to provide a reasoned explanation for decisions adopted within the scope of discretionary powers is of essential importance for maintaining trust in the legal order.

These theoretical premises are particularly significant when applied to the public enforcement officer, as the holder of entrusted public powers who directly affects the property rights and legal security of the parties in enforcement proceedings. Precisely because of the intensity of interference with the debtor's rights, the discretionary powers of the public enforcement officer must be clearly grounded in normative provisions and strictly limited, which will be further examined in the following sections of this paper.

Law must constantly evolve and adapt to changes in socio-political reality, new systems of values, and concrete life circumstances, even though in practice it often lags behind social development (Avramović, 2012, p. 323).

Normative Framework of the Discretionary Powers of the Public Enforcement Officer

The Position of the Public Enforcement Officer as a Holder of Public Authority

Entrusted public powers constitute one of the essential features of the position of public enforcement officers within the judicial system (Trešnjev, 2018, p. 302). The law provides that a public enforcement officer exercises the public powers entrusted to them by statute. Unlike notaries public, who are organized as a service of public trust, enforcement officers possess only those public powers explicitly conferred by law, which implies that they undertake certain actions prescribed by law either independently or upon the order of a court (Šarkić, Radulović, Počuča, 2019, p. 58).

Under the Law on Enforcement and Security, the public enforcement officer is authorized to independently carry out enforcement actions within the limits established by law and the enforcement instrument, while being obliged to act conscientiously, impartially, and in accordance with the purpose of enforcement proceedings. It is precisely this independence in action that provides the normative basis for the existence of discretionary powers, while at the same time requiring a clear distinction between permissible discretionary authority and impermissible arbitrariness.

Discretionary Powers in the Conduct of Enforcement Proceedings

The discretionary powers of the public enforcement officer in enforcement proceedings do not stem from a single explicit statutory provision, but are dispersed across a number of norms that leave room for choice among several legally permissible options. Since enforcement proceedings are strictly formal in nature, discretionary powers within this procedure are relatively narrow. These powers most often manifest themselves at the stage of carrying out enforcement, where it is necessary to adapt the general legal norm to the specific circumstances of the case.

One typical example of discretionary authority concerns the selection of the means and objects of enforcement. Although the public enforcement officer is bound by the enforcement instrument and the creditor's motion, they retain a certain degree of assessment regarding the expediency and appropriateness of particular measures, taking into account both the efficiency of the proceedings and the protection of the debtor's rights.

In performing their duties, the public enforcement officer is bound by the principle of formal legality, which implies that the enforcement instrument cannot be reviewed, altered, or adapted within enforcement proceedings. Nevertheless, certain deviations from this principle exist, particularly in situations involving specific or determinable objects (Nikolić, Šarkić, 2022, pp. 1272-1273).

Discretionary powers are also manifested in determining the order and dynamics of enforcement actions, especially in more complex cases involving multiple enforcement measures or interventions affecting different forms of the debtor's property. In such cases, the public enforcement officer determines the priorities of action, assessing which measures will most quickly and effectively lead to the achievement of the purpose of enforcement.

A particular form of discretionary authority is also present when assessing the need to undertake certain auxiliary or preparatory actions, as well as when deciding on the manner of their execution. Although these decisions are formally procedural in nature, they may have a significant impact on the rights and legal interests of the parties, which further emphasizes the need for clear normative frameworks governing their application.

Enforcement proceedings are inherently instrumental, as they serve the compulsory realization of subjective rights that have already been established or recognized. Efficiency and procedural economy represent legitimate objectives of the legislator; however, these objectives cannot be pursued at the expense of violating the fundamental rights of the parties.

By allowing a choice between several lawful solutions, the legislator seeks to ensure the flexibility of the procedure and its adaptability to the specific circumstances of individual cases. Nevertheless, the purpose of enforcement proceedings is not limited to speed and efficiency, but also encompasses the obligation to respect the principles of legality, proportionality, and fairness.

Limits of the Discretionary Powers of the Public Enforcement Officer

The discretionary powers of public enforcement officers in the conduct of enforcement are determined by the fundamental principles of enforcement proceedings. Here, we will address certain principles.

The Principle of Legality as the Fundamental Limit of Discretion

The principle of legality, derived from the principle of constitutionality, requires compliance with all legal norms that form the legal order and lawful conduct by all participants in the proceedings when undertaking procedural actions in enforcement proceedings (Stanković, Trgovčević Prokić, 2020, p. 40). This principle represents the fundamental limitation of any form of discretionary power in a state governed by the rule of law. Although discretionary powers imply a certain degree of freedom in decision-making, they can never exist outside the legal framework nor in contradiction with applicable regulations. A public enforcement officer, as the holder of public powers, is obliged to base every decision adopted within the scope of discretionary authority on the law and the enforcement instrument, respecting their purpose and limits.

Discretionary powers do not imply authority to create new legal norms or to depart from explicit statutory prohibitions. Their function is limited to choosing among several legally permissible solutions already envisaged by the legislator. When a public enforcement officer exceeds these limits, such conduct loses the character of lawful discretionary authority and takes on the features of arbitrariness, thereby constituting a violation of the principle of legality.

In enforcement proceedings, the principle of legality has additional significance due to the intensity of interference with the debtor's property rights. Every decision of a public enforcement officer based on discretionary authority must therefore be clearly reasoned, so that it may be subjected to effective judicial review. The reasoning of the decision represents a key instrument for distinguishing the legitimate exercise of discretionary powers from arbitrary action.

The Principle of Proportionality

In addition to legality, one of the most important limitations of the discretionary powers of the public enforcement officer is the principle of proportionality between the objective to be achieved and the measure used to achieve it. This principle requires that every enforcement action be appropriate, necessary, and reasonable in relation to the purpose of enforcement proceedings. The objective of enforcement proceedings is the lawful and efficient satisfaction of the creditor's claim while simultaneously respecting the rights of the debtor (Bodiroga, 2023, p. 267).

This principle is established in Article 56 of the Law on Enforcement and Security, which provides that, when selecting the means and objects of enforcement for the satisfaction of a monetary claim, the public enforcement officer must take into account the proportionality between the amount of the debtor's obligation and the means and value of the object of enforcement. When choosing between several possible means and objects of enforcement, the public enforcement officer must, *ex officio*, ensure that enforcement is carried out by the means and against the object that is least burdensome for the debtor. However, the scope of this principle is limited, as it will not apply where the debtor has consented, in the form of a public or legally certified document, that enforcement be conducted by a specific means and against a specific object of enforcement, or where it has been clearly established that there is only one means and one object of enforcement from which the creditor's claim may be satisfied.

When carrying out enforcement, the public enforcement officer, with regard to the choice of the means and objects of enforcement, is guided by the proportionality between the amount of the obligation and the value of the object of enforcement (High Court in Novi Sad, Gži-721/2018, 11 December 2018). In the context of discretionary powers, the principle of proportionality serves to prevent excessive and unnecessary interference with the debtor's rights, particularly in situations where several alternative enforcement measures exist. The public enforcement officer must therefore take into account not only the efficiency of the proceedings but also the degree of burden that a particular measure imposes on the debtor.

Proportionality is of particular importance in enforcement against immovable property, where the consequences of the enforcement officer's actions may have long-term and far-reaching effects on the debtor's life and livelihood. In such cases, discretionary powers must be especially restricted and subjected to stricter criteria of justification. The use of the most severe enforcement measure cannot be justified solely by the interest of the creditor in rapid satisfaction if milder and equally effective measures are available.

The principle of proportionality thus operates as a corrective to discretionary powers, directing the actions of the public enforcement officer toward solutions that maintain a balance between the creditor's interests and the protection of the debtor's fundamental rights.

Protection of the Parties' Rights and the Right to a Legal Remedy

The limits of the discretionary powers of the public enforcement officer are further determined by the obligation to respect the rights of the parties in enforcement proceedings. Although enforcement proceedings have a distinctly coercive character, the parties do not lose their status as holders of

procedural rights, including the right to be informed, the right to a reasoned decision, and the right to a legal remedy.

There are also principles that are not explicitly emphasized but nevertheless permeate enforcement proceedings in their entirety (Keča, 2012, p. 151). One such principle is the protection of the enforcement debtor, according to which the creditor may not obtain less than the amount of the claim, nor may the debtor be deprived of more than what is owed (Jakšić, 2022, p. 882). In enforcement proceedings, the enforcement creditor already enjoys a more favorable legal position, since the existence and validity of the claim have been confirmed by the enforcement instrument (Šarkić, 2018, p. 39). The protection of the enforcement debtor, and of the debtor's property, is ensured through the application of the principle of formal legality as one of the fundamental principles, which means that enforcement cannot be carried out beyond the limits of the enforcement request (Masnikosa, Radovanov, 2018, p. 53).

The right to a legal remedy represents a key mechanism for examining the legality and correctness of the actions of the public enforcement officer, including the verification of whether discretionary powers have been exercised in accordance with the law.

The filing of legal remedies may affect the duration of enforcement proceedings, particularly where such remedies have suspensive effect, as this may slow down the procedure, especially in situations involving the abuse of procedural rights. In order to preserve the principle of efficiency in enforcement, the legislator has opted for the non-suspensive effect of legal remedies, thereby preventing ordinary legal remedies from obstructing the satisfaction of the enforcement creditor's claim. At the same time, the control mechanism within enforcement proceedings should ensure the realization of important legal-policy objectives, such as the right to a fair trial, equal legal protection, and the harmonization of judicial practice in the interest of legal certainty (Stanković, 2016, p. 584).

Accordingly, the current Law on Enforcement and Security provides for appeal and objection as legal remedies (Article 24 LES). Previous legislative solutions had provided only for objection. The reintroduction of the appeal in enforcement proceedings is justified by the need to ensure genuine two-tier decision-making, thereby fulfilling constitutional guarantees of the right to a legal remedy (Bodiroga, 2016, p. 609). In enforcement proceedings, the appeal is defined as a remonstrative, remonstrative-devolutive, preclusive, limited, and bilateral legal remedy which, as a rule, does not have suspensive effect (Stanković, Palačković, Trešnjev, 2022, p. 143). Extraordinary legal remedies (revision and reopening of proceedings) are not permitted in enforcement proceedings (Article 27 LES).

When deciding on a legal remedy, the court does not substitute its own assessment for the discretionary assessment of the public enforcement officer, but examines whether the legal conditions for the exercise of discretion have been met, whether the decision was adopted within the scope of authority, and whether it is reasoned in a manner that allows review of its legality. In this way, an institutional balance is ensured between the independence of the public enforcement officer and the protection of the parties' rights.

In addition to legal remedies, the Law on Enforcement and Security also provides for legal instruments. Thus, according to the provisions of Article 24(1) and Article 148(1) LES, a request for the elimination of irregularities does not constitute a legal remedy but rather a legal instrument available to parties and participants during and in connection with the enforcement procedure, by which they indicate to the court or the enforcement officer that an irregularity may have occurred. In such a case, the

enforcement debtor who has submitted a request for the elimination of irregularities has the right to reimbursement of costs and may submit a claim for costs against the opposing party as enforcement costs, which are compensated in accordance with Article 34 LES depending on the outcome of the procedure for the elimination of irregularities (Answers to questions of commercial courts adopted at the session of the Department for Commercial Disputes of the Commercial Appellate Court held on 6-7 November 2024 and at the session of the Department for Commercial Offences held on 7 November 2024, Paragraf legal database, accessed 6 January 2026). A decision rejecting a request for the elimination of irregularities may be challenged exclusively by objection as a legal remedy (Commercial Appellate Court, Iž-1733/2017, 6 December 2017).

Furthermore, the objection of a third party does not constitute a legal remedy but rather a specific legal instrument in enforcement proceedings by which a third party protects its rights by requesting the exclusion of its property, or the object subject to enforcement, from the specific enforcement procedure (Nikolić, Šarkić, 2024, p. 45).

The legal instrument of restitution in integrum under Article 28 LES is permitted exclusively in cases of failure to meet the deadline for filing an objection or an appeal in proceedings challenging an enforcement decision, while it cannot be used due to failure to undertake specific enforcement actions (Ristić, 2016, p. 60).

The interruption of proceedings (Article 29 LES) provides that if enforcement proceedings are interrupted by operation of law, the public enforcement officer, upon the motion of a party or ex officio, appoints a temporary representative for the party and continues the proceedings even before the reason for the interruption ceases. This does not apply in cases where the interruption results from the legal consequences of bankruptcy proceedings.

Where the interruption of enforcement proceedings occurs by operation of law, the decision on interruption is adopted in the form of a ruling confirming the occurrence of the statutory grounds for interruption. Likewise, the decision on a motion to continue the proceedings is adopted in the form of a ruling against which a legal remedy is permitted (Commercial Appellate Court Decision Iž-271/2021, Paragraf legal database, accessed 6 January 2026).

The discretionary actions of the public enforcement officer have a legitimate place within the enforcement system only if exercised within clearly defined normative and procedural limits that prevent arbitrariness and ensure legal certainty.

Judicial Control of the Actions of Public Enforcement Officers in the Exercise of Discretionary Powers

Judicial control of the actions of public enforcement officers represents a key mechanism for ensuring legality and preventing the misuse of discretionary powers in enforcement proceedings. Although the public enforcement officer is conceived as an independent holder of public powers, their actions are not exempt from institutional oversight but are subject to a multilayered system of legal protection. In addition to judicial control, it should be noted that the profession of public enforcement officers is also subject to supervision by the competent Ministry of Justice and the Chamber of Public Enforcement Officers. Thus, the Supreme Court of Cassation held that a decision imposing the disciplinary measure of permanent prohibition from performing the activity of a public enforcement officer was lawful and well-

founded, even though administrative disputes initiated by the same person concerning previously imposed disciplinary measures had not yet been finally resolved (Supreme Court of Cassation, Uzp-345/2022, 12 April 2023).

Within the framework of regular judicial control, the court has the authority to examine the legality of decisions and actions of the public enforcement officer upon legal remedies submitted by the parties in enforcement proceedings. The limits of judicial review of discretionary powers are reflected in the need to respect the independence of the public enforcement officer within the framework of the law. When discretionary authority has been exercised contrary to the law, without adequate reasoning, or in violation of the fundamental principles of enforcement proceedings, the court is obliged to intervene and ensure the protection of the parties' rights. Serious disciplinary violations, such as changing the means and objects of enforcement and unlawful or improper conduct, constitute grounds for establishing disciplinary liability and imposing the measure of permanent prohibition from performing the activity of a public enforcement officer (Supreme Court of Cassation, Uzp-187/2019, 26 June 2019).

The discretionary powers exercised by the public enforcement officer when adopting conclusions that govern the conduct of the proceedings do not represent a sphere of arbitrariness but are justified only within the limits prescribed by law. Accordingly, there is no legal interest in filing a lawsuit seeking a declaration of nullity of conclusions adopted by a public enforcement officer regarding the sale or delivery of immovable property when such conclusions were issued in the exercise of public powers during the enforcement procedure (Appellate Court in Belgrade, GŽ-1641/2019, 11 April 2019).

Critical Review and Practical Problems in the Application of Discretionary Powers

Although the discretionary powers of the public enforcement officer are necessary to ensure the efficiency and flexibility of the proceedings, practice indicates the existence of certain problems arising from their insufficient precision and systematic regulation. These problems do not call into question the justification of discretionary powers themselves, but they point to the need for their clearer legal formulation and more consistent oversight.

One of the main practical issues concerns the insufficiently clear distinction between discretionary authority and bound action. In certain situations, public enforcement officers invoke discretionary powers even where the law prescribes relatively precise conditions for action, which may lead to a misunderstanding of the scope of their authority. For instance, calculating a higher amount as an advance for costs of work or as a success fee for the execution of enforcement has constituted grounds for establishing disciplinary liability and imposing a more severe disciplinary measure on a public enforcement officer (Supreme Court of Cassation, Uzp-381/2018, 13 December 2018). Such practice creates legal uncertainty and makes it more difficult for parties to predict the course and outcome of enforcement proceedings.

An additional problem is the inconsistency in the application of discretionary powers. Since the law does not provide clear guidelines for the use of discretionary powers in certain procedural situations, the practice of public enforcement officers may vary considerably in similar or almost identical cases. Such inconsistency may lead to violations of the principle of equality of the parties before the law and create an impression of arbitrariness in decision-making.

A particularly sensitive issue concerns the application of discretionary powers in situations involving intensive interference with the debtor's property rights, especially in enforcement against immovable property. In such cases, the absence of clear criteria for the selection and sequence of enforcement actions may result in excessive restrictions on the debtor's rights, even when milder and equally effective alternatives exist. This points to the need for the consistent application of the principle of proportionality as an essential corrective to discretionary powers. Submitting a motion for enforcement against the entirety of the debtor's property allows for the issuance of an enforcement decision without specifying the means and object of enforcement in the motion itself (Higher Court, Subotica, Gžl.114/2018, 24 September 2018). However, even in such situations, violations of the principle of proportionality may occur. The public enforcement officer is obliged, *ex officio*, to identify the debtor's property when enforcement has been ordered against the entirety of the debtor's assets (Commercial Appellate Court, Iž.1044/2018, 30 August 2018).

Practical problems in the application of discretionary powers are further intensified by the insufficiently developed practice of judicial review in certain segments of enforcement proceedings. Although judicial protection formally exists, its effectiveness depends on the quality of the reasoning provided in the decisions of public enforcement officers, the number of legal remedies and legal instruments filed, and the willingness of courts to consistently examine the limits of lawful discretionary action. Where decisions are insufficiently reasoned, judicial review loses its essential function.

These problems do not indicate the need to abolish or narrow discretionary powers as such, but rather the need for their clearer normative and institutional guidance. Discretionary powers can fulfill their positive role in enforcement proceedings only if accompanied by precise rules, consistent judicial oversight, and a well-developed sense of professional responsibility on the part of holders of public authority.

Conclusion

The analysis of the discretionary powers of public enforcement officers shows that this institution represents an indispensable (although limited) element of modern enforcement proceedings, conditioned by the need for efficiency, flexibility, and the adaptation of actions to the specific circumstances of individual cases. Discretionary powers, understood as a legally permitted margin of choice between several lawful solutions, enable the public enforcement officer to achieve the purpose of enforcement proceedings in situations that cannot be fully predetermined by normative regulation.

However, precisely because of the scope of authority entrusted to public enforcement officers, particularly in situations involving significant interference with the debtor's property rights, discretionary powers must be clearly limited and subject to effective legal control. Discretionary powers cannot be understood as a space of unlimited freedom, but solely as an instrument for achieving the objectives of the law within the framework of the principles of legality, proportionality, and the protection of the parties' rights.

The current normative framework of enforcement proceedings recognizes the existence of discretionary powers of public enforcement officers, but it does not regulate them systematically or explicitly. The limits of their application are largely derived from the general principles of enforcement proceedings and from the mechanisms of judicial and constitutional review. Such a solution, although

functional, leaves room for inconsistent practice and differing interpretations, which may lead to legal uncertainty and the perception of arbitrariness in decision-making.

Improving the normative framework should not lead to the narrowing of discretionary powers as such, but rather to their more consistent and predictable use. Only discretionary powers that are clearly defined in law and subject to effective institutional oversight can contribute to strengthening trust in enforcement proceedings and confirm the role of the public enforcement officer as a professional and responsible holder of public authority in a state governed by the rule of law.

References

- Avramović, D. (2012). Odluka ili norma – slobodno sudijsko uverenje kao pretnja vladavini prava, [Judicial Discretion as a Treat to the rule of law], Zbornik radova Pravnog fakulteta u Novom Sadu, 2/2012, 323.
- Bodiroga, N (2011) Izvršitelj, Zbornik radova Pravnog fakulteta u Novom Sadu, 2/2011, Novi Sad, p. 194.
- Bodiroga, N (2012), Izvršni postupak za naplatu potraživanja po osnovu izvršenih komunalnih i sličnih usluga, Anali Pravnog fakulteta u Beogradu, godina LX, 2/2012, Beograd, p. 208.
- Bodiroga, N (2016), Žalba u novom Zakonu o izvršenju i obezbeđenju, Pravni život, Udruženje pravika Srbije, Beograd, 11/2016, p. 609.
- Bodiroga, N. (2023), Novi izvršni postupak, Pravni fakultet Univerzitet u Beogradu, Beograd, p., 267.
- Jakšić, A (2022), Građansko procesno pravo, Beograd, p. 882.
- Keča, R (2012), O osnovnim načelima Zakona o izvršenju i obezbeđenju, Zbornik radova Pravnog fakulteta u Novom Sadu, Novi Sad, p. 151.
- Krešić, Mario (2025) Izazovi za opću teoriju diskrecije [Challenges to a general theory of discretion], Zbornik Pravnog fakulteta u Zagrebu, vol. 75, br. 4, 2025, 527-549.
- Masnikosa, V, Radovanov, A (2018), Načelo zaštite izvršnog dužnika u izvršnom postupku, Pravni život br. 12/2018, Udruženje pravika Srbije, Beograd, p. 53.
- Nikolić M, Šarkić N (2022) Komentar Zakona o izvršenju i obezbeđenju, Pravni fakultet Univerzitet Union u Beogradu, JP „Službeni glasnik”, Beograd, p. 1272-1273.
- Nikolić, M, Šarkić, N (2024), Moguća reforma izvršnog postupka, Pravni život, Udruženje pravika Srbije, Beograd, p.45.
- Presuda Vrhovnog kasacionog suda, Uzp-381/2018 od 13.12.2018., pravna baza Paragraf, pristup 06.01.2026.
- Presuda Vrhovnog kasacionog suda, Uzp-187/2019 od 20.06.2019., pravna baza Paragraf, pristup dana 06.01.2026.

- Presuda Vrhovnog kasacionog suda, Uzp-345/2022 od 12.04.2023., pravna baza Paragraf, pristup dana 06.01.2026.
- Rešenje Privrednog apelacionog suda, Iž-1733/2017 od 06.12.2017. godine, pravna baza Paragraf, pristup dana 06.01.2026.
- Rešenje Privrednog apelacionog suda, Iž-1044/2018 od 30.08.2018. godine – Sudska praksa privrednih sudova, Bilten br. 1/2019, pravna baza Paragraf, pristup dana 06.01.2026.
- Rešenje Višeg suda u Subotici, GŽI-114/2018 od 24.09.2018. godine, pravna baza Paragraf, pristup dana 06.01.2026.
- Rešenje Višeg suda u Novom Sadu, GŽI-721/2018 od 11.12.2018., pravna baza Paragraf, pristup dana 06.01.2026.
- Rešenje Apelacionog suda u Beogradu, GŽ-1641/2019 od 11.04.2019. godine, pravna baza Paragraf, pristup dana 06.01.2026.
- Rešenje Privrednog apelacionog suda, Iž-271/2021 od 08.04.2021., pravna baza Paragraf, pristup dana 06.01.2026.
- Ristić, V (2016), Pravni lekovi i pravna sredstva i njihova primena u novom Zakonu o izvršenju i obezbeđenju, Pravni život, Udruženje pravnika Srbije, Beograd, 12/2016, p. 60.
- Stanković, G, (2016), Mehanizam kontrole izvršenja prema odredbama novog Zakona o izvršenju i obezbeđenju, Pravni život, Udruženje pravnika Srbije, Beograd, 11/2016, p. 584.
- Stanković G, Trgovčević Prokić M (2020), Postupak izvršenja i postupak obezbeđenja u Republici Srbiji, JP „Službeni glasnik”, Beograd, p. 40.
- Stanković, G, Palačković, D, Trešnjev, A (2022), Komentar Zakona o izvršenju i obezbeđenju, Službeni glasnik, Beograd, p. 143.
- Trešnjev Aleksandra (2018), Od službenih lica do javnih izvršitelja [From public officials to public enforcement officers], Četrdeset godina izvršnog zakonodavstva u građanskim postupcima, zbornik radova, Beograd, Pravni fakultet Univerziteta Union u Beogradu, Službeni glasnik, p. 302.
- Šarkić, N (2018), Prikaz razvitka izvršnog zakonodavstva u poslednjih 40 godina kroz analizu osnovnih načela, Četrdeset godina izvršnog zakonodavstva u građanskim postupcima, radova, Beograd, Pravni fakultet Univerziteta Union u Beogradu, Službeni glasnik, p. 39.
- Šarkić, N., Radulović, D., Počuča, M. (2019), Posebni građanski postupci, Pravni fakultet Univerzitet Union, JP „Službeni glasnik“, p. 58.
- Odgovori na pitanja privrednih sudova koji su utvrđeni na sednici Odeljenja za privredne sporove Privrednog apelacionog suda od 06. i 07.11.2024. godine i na sednici Odeljenja za privredne prestupe od 07.11.2024. godine, dostupno u Pravnoj bazi ParagrafLex.

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Sažetak

Diskreciona ovlašćenja javnog izvršitelja predstavljaju ograničen, ali značajan prostor izbora između više zakonom dopuštenih rešenja u fazi sprovođenja izvršenja. Ona nisu sistematski i izričito normirana, već disperzno proizlaze iz odredaba Zakona o izvršenju i obezbeđenju koje izvršitelju ostavljaju procenu pri izboru sredstava i predmeta izvršenja, redosleda i dinamike radnji, kao i načina preduzimanja pomoćnih mera. Zbog intenziteta zadiranja u imovinska prava dužnika, diskreciono postupanje je legitimno samo ako je strogo omeđeno svrhom postupka i načelima zakonitosti, srazmernosti i zaštite procesnih prava stranaka, uključujući pravo na obrazloženu odluku i pravni lek. Sudska kontrola obezbeđuje proveru da li je odluka doneta u granicama ovlašćenja i uz razloge koji omogućavaju nadzor zakonitosti, čime se sprečava arbitrarnost. Uočeni praktični problemi neujednačene primene ukazuju na potrebu preciznijih kriterijuma i jačanja obaveze obrazlaganja de lege ferenda.

Ključne reči: javni izvršitelj, diskreciona ovlašćenja, izvršni postupak, zaštita prava stranaka, sudska kontrola.