

**Analysis of the system of public enforcement officers in comparison to
the system of court enforcement from the aspect of efficiency and
costs of the enforcement procedure**

Introduction

The best argument to support the claim that enforcement procedure is important is probably the opinion of the European Court of Human Rights that enforcement of court decisions should be treated as a constituent part of the fundamental human right to fair trial within a reasonable time. Given that opinion, and considering that every democratic state aspires to ensure the best possible way to conduct the enforcement procedure, there is the need to analyse the system of public enforcement officers in comparison to the system of court enforcement from the aspect of efficiency and the costs of enforcement procedure, both for the parties and for the state.

Law on Enforcement and Securing of Claims (Official Gazette of Montenegro 36/2011) came into force on 26 September 2011 and for the first time in Montenegro it defined the system of public enforcement officers. The Law on Public Enforcement Officers (Official Gazette of Montenegro 61/2011) came into force on 31 December 2012. Following secondary legislation pieces were adopted: Rulebook on the number of posts and registered offices of public enforcement officers (OG MN 19/2012), Rulebook on the form and contents of the official identity card of public enforcement officers and their deputies (OG MN 16/2012 and 19/2012), Rulebook on the curriculum and the manner of taking exam for public enforcement officers (OG MN 51/2011), Rulebook on the work of public enforcement officers (OG MN 42/2012) and the Decree on the Tariff of Public Enforcement Officers (OG MN 28/2013).

Although appointment of the first public enforcement officers was envisaged for the first quarter of 2013 it was postponed due to a rather small interest in this profession. With the view to creating conditions for the beginning of work of public enforcement officers, three examination terms were organized (26 February - 1 March 2013, 19 April - 22 April 2013 and 27 September -30 September 2013) where the total number of 6 candidates passed the exam. With the same aim two trainings were organized (6-7 December 2012 and 6 - 7 June 2013) where the experience from the region was presented. These trainings were attended by the candidates interested to work in the public enforcement service.

Two advertisements for the appointment of public enforcement officers were published (in July and October 2013) and the total

number of 16 candidates applied. Action Plan for Judiciary envisaged that public enforcement officers would start working in January 2014.

The system of public enforcement officers has been planned to be a flexible system that will ensure fast, efficient and expert implementation out of the procedure of enforcement with lower costs for the state. This Analysis is exactly aimed at providing an overview of the advantages of the system of public enforcement officers in comparison to the system of court enforcement. The Analysis includes the following: advantages of the system of public enforcement officers in comparison to the system of court enforcement from the aspect of efficiency of enforcement procedure.

Advantages of the public enforcement officers system in comparison to the system of court enforcement from the aspect of the efficiency of the enforcement procedure

The text below presents the factors that will have a positive influence on the implementation of the enforcement procedure by public enforcement officers:

- Limited number of public enforcement officers and the principle of territorial jurisdiction

Article 6 of the Law on Public Enforcement Officers defines the number of posts of public enforcement officers for certain official territory and the establishment of registered office in the same official territory and defines that for the territory of a municipality one public enforcement officer is to be appointed for every 25000 residents. Exceptionally, if the number of enforcement cases significantly increases, a larger number of public enforcement officers can be appointed.

Also, if due to a small population size and a small number of enforcement cases in certain official territory it is not justified to appoint a public enforcement officer for that territory and if there are no applied candidates for certain official territory, the Minister will designate a public enforcement officer from another official territory to perform the duty of a public enforcement officer for that territory as well. This solution ensures the respect for the principle of access

to justice, i.e. judgment creditors and judgment debtors are ensured equality of access, i.e. equal legal protection.

The limited number of public enforcement officers in combination with the principle of territorial jurisdiction will have a positive effect on the motivation of public enforcement officers to carry out the enforcement procedure in an efficient way. Although the competition is reduced to a small number of public enforcement officers, it will be in their interest to be efficient and to fight for their place in the market in such a way. On top of that, the limited number of the enforcement officers means that each of them will have a larger workload, which in its turn means that the costs of enforcement can be lower in the future.

Setting the exact number of public enforcement officers within a territorial jurisdiction prevents the concentration of public enforcement officers in the economically developed municipalities, while the poorer municipalities are left without access to public enforcement officers. This in its turn ensures high standards for the appointment of public enforcement officers and better control of their work.

Given the number of cases in the procedure for court enforcement and the number of enforcement judges, it is clear that the efficiency in solving the cases stands in direct correlation with the number of enforcement judges.

The table below presents the number of enforcement judges in basic and commercial courts in Montenegro in relation to the number of envisaged posts of public enforcement officers and the number of cases in the procedure (I and IV)

Court	No. of judges	No. of public enforcement officers	Difference	No. of cases in the procedure in 2012
Commercial Court	2.51		+4.34	12.141 (I)*
Basic Court Podgorica	3.51	10		136.072
Commercial Court Bijelo Polje	not available	2		1.232(I)*
Basic Court Bijelo Polje	0.90		+1.10	6.257
Basic Court Kolašin	0.47	1	+0.53	1.659

Basic Court Bar	1.06	2	+ 0.94	7.155
Basic Court Berane	3.00	2	-1.87	4.772
Basic Court Plav	0.87			1.399
Basic Court Danilovgrad	1.07	1	-0.07	11.230
Basic Court Kotor	1.29	3	+1.71	5.839
Basic Court Nikšić	1.99	4	+2.01	28.984
Basic Court Ulcinj	1.58	1	-0.58	4.879
Basic Court Pljevlja	0.99	2	+0.32	2.792
Basic Court Žabljak	0.69			.335
Basic Court Herceg Novi	0.97	2	+1.03	5.974
Basic Court Rožaje	1.70	1	-0.70	3.526
Basic Court Cetinje	0.39	1	+0.61	9.855
TOTAL	22.63	32	9.37	244.621

*Data on enforcement procedures conducted in commercial courts on the basis of a valid document are not available.

The above table shows that the number of public enforcement officers will be higher by 9.37 than the number of enforcement judges. Although the table shows that in individual municipalities (Berane, Plav, Ulcinj and Rožaje) the envisaged number of public enforcement officers is lower than the existing number of the enforcement judges, this does not mean that the smaller number of public enforcement officers will have a negative impact on the enforcement procedure. There are two reasons for this:

- Flexibility in the manner of appointment of public enforcement officers shall ensure that if there is a larger number of cases, there is also possibility that the Minister of justice appoints an additional number of public enforcement officers in the procedure, which is not demanding. Since the judges are guaranteed a permanent function, they cannot be appointed and then dismissed depending on the flow of enforcement cases.
- The number of enforcement judges does not depend only on the number of enforcement cases and the portfolio of enforcement is determined in the annual plan of distribution of judges within every individual court.

In the system of court enforcement, the judgment creditor cannot choose who will be entrusted with the enforcement, i.e. he depends on the enforcement judges in the court that has jurisdiction. In that respect, there is the issue of random allocation of cases in the courts with only one enforcement judge. After introduction of the system of public enforcement officers, judgment creditor will have the opportunity to choose the public enforcement officer for his case, and

the only limitation will be the territorial principle - the case can be handled only by the public enforcement officers of the territory of residence/registered office of the judgment debtor, i.e. public enforcement officer from the territory of the court that issued the enforcement title.

- Specialization of public enforcement officers

Article 10 of the Law on Public Enforcement Officers defines the conditions that a public enforcement officer should meet, the most important certainly being the exam for public enforcement officers and at least 5 years of work experience in legal transactions.

Public enforcement officers will be specialized for the enforcement procedure. Enforcement judges most frequently proceed in other types of cases (litigations, non-contentious procedures, etc.), which means that they have a large workload. On the other side establishing the system of special enforcement judges would be expensive for the state.

- Access and acquisition of the data on the property of judgment debtor from the competent authorities

Article 32 of the Law on Enforcement and Securing of Claims stipulates that, upon the request of the court or a public enforcement officer, judgment debtor is obliged to submit all data about the property and incomes of the public debtor that are necessary to carry out the enforcement. The court or public enforcement officer can request these data from other physical and legal entities, i.e. state bodies, state administration bodies or local government bodies. Physical entity or responsible person in a legal entity that does not submit the requested data or submits incorrect or incomplete data shall be imposed a pecuniary penalty pursuant to Article 230 of the Law. The penalty shall be imposed by the court, *ex officio* and upon the proposal of the public enforcement officer.

Persons and bodies that get the request of the public enforcement officer to submit data on the property of judgment creditor cannot claim the need to preserve confidentiality or to protect such data. However, Article 30 of the Law on Public Enforcement Officers stipulates that public enforcement officers shall keep as a business secret the data that they obtain while carrying out their duties and

this obligation remains in force even after they stop performing their duties. This obligation is also valid for the deputies of public enforcement officers and their employees.

The table below presents the number of enforcement cases (on the basis of the enforcement title) where the court requested the data on the property of judgment debtor in the period of 1 January 2009 - 30 August 2013.

Table no. 2

COURT	NO. OF CASES WHERE DATA ON PROPERTY OF JUDGMENT DEBTORS WERE REQUESTED
Commercial Court Podgorica	no data
Basic Court Podgorica	no data
Commercial Court Bijelo Polje	4
Basic Court Bijelo Polje	5
Basic Court Kolašin	23
Basic Court Bar	45
Basic Court Berane	964
Basic Court Plav	47
Basic Court Danilovgrad	8
Basic Court Kotor	no data
Basic Court Nikšić	350
Basic Court Ulcinj	1
Basic Court Pljevlja	18
Basic Court Žabljak	80
Basic Court Herceg Novi	no data
Basic Court Rožaje	15
Basic Court Cetinje	14
TOTAL	1.574

Statistics show that in the referred period the courts used their legal capacity to obtain data on the property of judgment debtors in 1,574 cases. If we take into account that in the same period the courts proceeded in 30,958 enforcement cases on the basis of enforcement titles, we can conclude that in 5.10% cases they requested the data on the property of judgment debtors. (NOTE: the courts that did not submit data were not taken into account).

There are no data on the sanctions imposed due to the omission to submit data upon request of the court.

We can rightfully expect that public enforcement officers will be more motivated and more accurate in acquiring data on the property of debtors, above all because of the fact that the Decree on the Tariff for Public Enforcement Officers stipulates a remuneration for successful enforcement, and therefore public enforcement officers will use all available legal means to obtain these data. It is therefore expected that public enforcement officers will not be lenient if state bodies, and legal and physical entities fail to submit the requested data, and therefore the number of motions sent to the court to impose sanctions according to Article 32 of the Law on Enforcement and Securing of Claims will be larger. The amount of the sanction envisaged (for physical entities and for responsible persons in legal entity 200 euro - 2,000 euro, and for legal entities, entrepreneurs and bodies of 2,000 euro - 20,000 euro) and its more frequent imposition than in the period when the enforcement procedure was conducted by the court, can have a positive impact on the timely and accurate submission of the requested data.

Public enforcement officers can also collect the data on the immovable property owned by the judgment debtor through electronic database. Formal approach of the court, which frequently harms the efficiency of the procedure, requires that the court officially addresses the competent body that is requested the data on the property. It has to be done in written form and it brings to delays in the procedure of obtaining these data.

Finally, in order to ensure that he/she can carry out the procedure in the way that is the most purposeful for the judgment creditor, the public enforcement officer has to have the data on the property of the judgment debtor.

- *Carrying out the enforcement procedure in the way which is the most purposeful for the judgment creditor*

Article 27 of the Law on Enforcement and Securing of Claims stipulates that enforcement is done by the means and on the assets that are listed in the motion for enforcement. If the means and the assets subject to enforcement are not listed in the motion for enforcement, public enforcement officer will carry out the enforcement by the means and on the assets he/she considers to be the most purposeful, and such as to ensure the most favourable settlement for the judgment creditor. Judgment creditor can request

the public enforcement officer to undertake all actions in the enforcement procedure without any limitation. The difference between the court enforcement and enforcement conducted by public enforcement officers lies in the fact that the motion for enforcement submitted to public enforcement officer does not have to contain the means and assets subject to enforcement.

Thus, if the claim that is to be enforced is not settled through freezing of the bank account of the debtor, the creditor has to submit a new motion for enforcement and state new means and the manner of enforcement. He/she also has to pay a new court fee. Article 41 of the Law on Public Enforcement Officers stipulates that the public enforcement officer is obliged to keep a special account where only the funds collected in the enforcement procedure can be paid. Public enforcement officer will thus have a direct and timely insight into the success of enforcement and therefore, if the enforcement through freezing of the account of judgment debtor fails, the enforcement officer can initiate enforcement against other assets of the debtor. This provision significantly improves the efficiency of the procedure.

It is important to note that neither courts nor Central Bank of Montenegro have statistics on the collection from the bank accounts of debtors in enforcement procedures. As a reminder, it is worth mentioning that the Central Bank does the involuntary collection only from the accounts of legal entities. Thus, after the enforcement title becomes final, it is submitted to the Central Bank of Montenegro that is not obliged, however, to send to the court any feedback on the settlement of the claim through involuntary collection. Annual report on the operation of the Central Bank for 2012 contains the data that for 2011 the total number of entries for involuntary collection (which is the same as the number of submitted writs of enforcement) was 30,601, while in 2012 it was 24,727.

The table below shows the number of proposed enforcements and the number of carried out enforcements on the pecuniary claims (on the basis of the enforcement title):

Table No. 3

COURT	2009	2010	2011	2012	2013	TOTAL	CARRIED OUT
Commercial Court	12,820	12,426	12,315	11,373	5,926	54,860	No data

Podgorica							
Basic Court Podgorica	4,798	5,698	6,431	5,184	4,162	26,273	23,711
Commercial Court Bijelo Polje	95	169	155	104	45	568	435
Basic Court Bijelo Polje	338	1,092	535	314	296	2,575	1,620
Basic Court Kolašin	171	130	71	79	53	504	370
Basic Court Bar	102	139	240	204	136	821	277
Basic Court Berane	904	653	489	510	269	2,825	1,659
Basic Court Plav	476	145	160	181	129	1,091	702
Basic Court Danilovgrad	206	105	72	139	50	572	321
Basic Court Kotor	123	142	125	156	159	705	417
Basic Court Nikšić	464	480	375	303	276	1,898	1,847
Basic Court Ulcinj	157	145	289	255	150	996	85
Basic Court Pljevlja	485	491	469	298	204	1,947	1,704
Basic Court Žabljak	90	44	58	79	72	343	246
Basic Court Herceg Novi	97	165	136	134	127	659	407
Basic Court Rožaje	340	395	431	795	362	2,323	1,622
Basic Court Cetinje	73	49	90	57	38	307	193
TOTAL	21,739	22,468	22,441	20,165	12,454	99,267	35,616

Thus, in 35.88 cases the procedure has been completed by the enforcement against the monetary claims of the debtor. We would like to note that this is not the percentage of the settled claims, since there is no statistics on that.

The table below shows the amounts of the claims whose settlements were requested in the enforcement procedure (on the basis of the enforcement title):

Table no. 4

COURT	2009	2010	2011	2012	2013	TOTAL
Commercial Court Podgorica	371,946,013.00	245,218,337.00	294,111,038.00	425,446,583.00	266,921,569.00	1,603,643,540.00
Basic Court Podgorica	371,946,013.00	38,297,677.70	35,569,297.52	25,175,530.03	19,050,831.53	142,001,332.13
Commercial						11,696,819.11

Court Bijelo Polje						
Basic Court Bijelo Polje						29,924,658.00
Basic Court Kolašin	405,020.00	194,767.00	1,837,305.00	116,826.00	586,787.00	3,140,705.00
Basic Court Bar	1,240,130.38	3,956,674.30	1,386,337.29	3,970,347.00	2,476,172.00	13,029,660.97
Basic Court Berane	1,074,592.00	1,095,166.00	704,004.00	1,231,698.00	971,639.00	5,077,099.00
Basic Court Plav	326,965.91	222,196.74	233,715.08	184,399.74	126,427.94	1,093,705.41
Basic Court Danilovgrad						2,279,720.15
Basic Court Kotor						37,619,137.26
Basic Court Nikšić	7,755,655.00	4,605,958.00	2,894,364.00	3,791,508.00	2,319,103.00	21,366,588.00
Basic Court Ulcinj	854,339.39	391,710.00	511,123.35	677,435.76	312,727.69	2,747,336.19
Basic Court Pljevlja						23,481,882.86
Basic Court Žabljak						1,005,863.75
Basic Court Herceg Novi						5,434,036.00
Basic Court Rožaje						13,958,908.00
Basic Court Cetinje	518,879.48	203,212.98	236,495.99	408,621.47	104,859.50	1,472,069.42
TOTAL						1,918,973,061.25

Note: Some of the courts submitted only aggregate data.

The Law on Enforcement and Securing of Claims separately treats enforcement against the salary of the judgment debtor. The Law, namely, creates the opportunity to define in the writ of enforcement against the salary that the employer of the judgment debtor (current and future) is obliged to pay a part of the judgment debtor's salary to the account of public enforcement officer, who then transfers the funds to the account of the judgment creditor. Thus, in this case, also, unlike the court, public enforcement officers have timely information on the course of settlement of the claim, and if the payment is not done some other means and assets can be set immediately, according to the law. On top of that, upon the proposal of the judgment creditor, public enforcement officer will order the employer to settle all the instalments that he failed to pay to the account of the creditor, and the employer will also be obliged to compensate for the damage that the creditor suffered due to his failure to make the payments.

The table below presents the number of enforcements against the salary of the judgment debtor (on the basis of enforcement title):

Table no. 4

COURT	NUMBER OF ENFORCEMENT AGAINST THE SALARY OF THE JUDGMENT DEBTOR
Commercial Court Podgorica	No data
Basic Court Podgorica	No data
Commercial Court Bijelo Polje	3
Basic Court Bijelo Polje	1,475
Basic Court Kolašin	32
Basic Court Bar	70
Basic Court Berane	1,156
Basic Court Plav	202
Basic Court Danilovgrad	319
Basic Court Kotor	no data
Basic Court Nikšić	1,800
Basic Court Ulcinj	70
Basic Court Pljevlja	1,703
Basic Court Žabljak	125
Basic Court Herceg Novi	151
Basic Court Rožaje	1,250
Basic Court Cetinje	137
TOTAL	8,493

As the table shows, out of the total number of 32,034 enforcement cases in the reported period in 26.52% the enforcement was ordered against the salary of the judgment debtor.

- *Deadlines for proceeding in the enforcement procedure*

Adequacy of a measure should be judged on the basis of the efficiency in its implementation. Law on Enforcement and Securing of Claims stipulates that the decision on the motion for enforcement has to be rendered within 5 days from the day on which the motion was submitted. The deadlines set in the Law are instructive, which means that the court does not have to proceed within the required deadlines. On top of that, since there is a large number of enforcement cases, the set deadline of 5 days is extremely short. In order to get a better position in the market, a public enforcement officer will have stronger interest comply with the deadlines defined in the law.

The table below shows the duration of the enforcement procedures in basic courts in 2012 (on the basis of enforcement title):

Up to 3 months	Up to 6 months	Up to 9 months	Up to 1 year	Over 1 year
8,013	2,275	1,500	1,633	2,470
50.42%	14.32%	9.44%	10.28%	15.54%

Next table presents duration of enforcement procedures in commercial courts in 2012 (on the basis of enforcement title):

Up to 3 months	Up to 6 months	Up to 9 months	Up to 1 year	Over 1 year
10,560	735	157	11	0
92.12%	6.41%	1.37%	0.10%	0%

- Satisfaction of judgment creditor through the sale of movables

Advantages of the system of public enforcement officers can also be seen in the settlement of claims through sale of movable assets of the judgment debtor. The capacities of the state for storing seized movables are, namely, limited, so this type of enforcement is opted for only in exceptional cases. Sale of movables of the debtor is a convenient way to satisfy the creditor particularly in small claims cases. Public enforcement officer has a direct financial interest to sell the movables that are subject to enforcement at the best possible price, so he/she will advertise the movables, organize a public auction and other activities, that the courts do not have any capacity for.

The table below presents the number of proposed enforcements against movables (on the basis of enforcement title) by years and the number of carried out enforcements:

Table no. 5

COURT	2009	2010	2011	2012	2013	TOTAL	CARRIED OUT
Commercial Court Podgorica	/	/	18	89	39	146	/
Basic Court Podgorica	3,308	1,913	1,393	1,312	847	8,773	2,713
Commercial Court Bijelo Polje	10	10	7	9	2	38	4
Basic Court Bijelo Polje	6,512	6,332	5,909	4,621	2,277	25,651	6,293
Basic Court Kolašin	24	33	39	32	19	147	17

Basic Court Bar	337	172	348	266	202	1,325	203
Basic Court Berane	0	0	0	0	0	0	0
Basic Court Plav	0	0	0	0	0	0	0
Basic Court Danilovgrad	74	109	94	49	25	351	139
Basic Court Kotor	407	170	163	196	143	1,079	42
Basic Court Nikšić	1,015	566	1,159	1,151	355	4,246	2,290
Basic Court Ulcinj	3	5	4	6	1	19	8
Basic Court Pljevlja	154	74	147	58	38	471	119
Basic Court Žabljak	24	12	21	25	9	94	45
Basic Court Herceg Novi	59	62	52	60	69	302	47
Basic Court Rožaje	349	204	281	572	250	1,656	93
Basic Court Cetinje	123	114	193	94	27	551	208
TOTAL	12,399	9,776	9,828	8,540	4,303	44,849	12,221

The above data show that out of the total number of 44,849 motions for enforcement against movables, enforcement was carried out in 12,221 cases, i.e. 27.32% of cases. This shows that the state has very poor capacities for the settlement of claims through sale of movables.

- Satisfaction of creditors through sale of immovable assets

As for the satisfaction of creditors through the sale of immovable assets of the judgment debtor, the Law on Enforcement and Securing of Claims defined the authorities of public enforcement officers in details. Article 173, paragraph 4 provides for the sale of immovable assets in the third public auction at the price that can be under the assessed price without any limitation, with only one condition - that the creditor gives his/her consent. This provision ensures that the (legal) entity connected to the creditor can become a purchaser of the immovable assets that is sold at the price that is significantly lower than the market price. Article 177 of the Law on Enforcement and Securing of Claims defines who cannot be the purchaser of immovable assets, either on the basis of public auction or on the basis of a direct settlement. These persons are: "judgment creditor, judge, public enforcement officer and a person employed at the public enforcement officer`s or any person participating in the sale in line of his duty, as well as the person who is their relative in the direct blood line up to any degree, in the collateral line up to the fourth degree, a spouse or their relative by marriage up to the second degree, guardian, adoptee or

adoptive parent and a person who, under the law, may not acquire immovable property that is subject to enforcement." The Law does not limit (legal) entity related to the creditor to become a purchaser of the immovable property. The role of public enforcement officer is here still important since public enforcement officer, unlike the enforcement judge, has an interest in selling the property at the highest possible price, primarily because of his fee for successful enforcement. We think that in the process of the future reform of the enforcement procedure this provision should be amended and the lowest sale price should be set in relation to the assessed value of the immovable property, on the basis of comparative experience.

The table below shows the number of proposed enforcements against immovable property (on the basis of enforcement title) by years and the number of carried out enforcements:

Table no. 6

COURT	2009	2010	2011	2012	2013	TOTAL	CARRIED OUT
Commercial Court Podgorica	/	/	/	/	/	/	/
Basic Court Podgorica	283	139	121	147	101	791	331
Commercial Court Bijelo Polje	2	2	7	2	1	14	2
Basic Court Bijelo Polje	50	14	25	41	38	168	18
Basic Court Kolašin	3	4	4	7	10	28	2
Basic Court Bar	21	25	28	29	27	130	41
Basic Court Berane	0	0	0	0	0	0	0
Basic Court Plav	1	3	3	4	1	12	7
Basic Court Danilovgrad	2	9	14	9	5	39	18
Basic Court Kotor	47	65	70	65	61	308	47
Basic Court Nikšić	2	0	4	3	3	12	9
Basic Court Ulcinj	0	10	3	2	1	16	9
Basic Court Pljevlja	3	5	3	7	10	28	3
Basic Court Žabljak	4	4	3	8	4	23	9
Basic Court Herceg Novi	13	11	37	21	3	85	13
Basic Court Rožaje	6	3	2	4	2	17	6
Basic Court Cetinje	3	3	1	2	0	9	6

TOTAL	440	297	325	351	267	1,680	521
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The above data show that out of the total number of 1,680 motions for enforcement against immovable property of judgment debtors, enforcement was carried out in 521 cases, i.e. in 31.05% cases.

- Liability of public enforcement officers in comparison to the liability of judges

While judges are liable for the damage inflicted on any third party in their work according to the principle of objective liability, Article 31 of the Law on Public Enforcement Officers defines the liability of public enforcement officer for the damage he caused to other person by illegal or improper work during the enforcement procedure, as well as for the damage caused by any of his deputies and employees. Public enforcement officer is liable with his entire property. It is clearly defined that the state of Montenegro shall not be held liable for any damage caused by public enforcement officers.

Article 15 of the Law on Public Enforcement Officers stipulates that public enforcement officer is obliged to conclude an agreement with the insurance company on insurance from liability for the damage inflicted in the course of his/her duties. The lowest amount of insurance is set to at least 120 average salaries in Montenegro.

- Control of work of public enforcement officers

As stated above, a limited number of public enforcement officers ensures high standards in their appointment and better control of their work. The control of work of public enforcement officers is performed by the Chamber of Public Enforcement Officers, a professional association of all public enforcement officers and their deputies. The Law defines that the Chamber performs the control *ex officio*, at least once a year. The Chamber can make an insight into the files and financial books of public enforcement officers; into management of stored items; into receipts for the amounts paid as remunerations and compensations to enforcement officers, and to undertake all other activities according to the law and other procedures. The Chamber submits the report on the control to the Ministry of Justice.

On top of the control carried out by the Chamber, public enforcement officer is obliged to submit an annual report on his/her work to the Chamber. He/she is to submit that report by 1 March of the current year

for the previous year and the Chamber submits the report to the Ministry of Justice by 31 March of the current year for the previous year.

The Law on Public Enforcement Officers also regulates the issue of disciplinary responsibility of public enforcement officers. Disciplinary measures for disciplinary infringements are: warning, public warning, fine of 500 to 5,000 euro, prohibition to perform the duty in the period from three months to one year and permanent prohibition to perform the duty of public enforcement officer (in which case the public enforcement officer is dismissed).

Law on Enforcement and Securing of Claims introduces court review of the decisions rendered by public enforcement officers. Article 48 of this Law stipulates that a three-membered panel of the court for whose territory the public enforcement officer is appointed decides on the objection to the writ of enforcement, decision on rejecting and on dismissing the proposals rendered by the public enforcement officer.

Advantages of the system of public enforcement officers in comparison to the system of court enforcement from the aspect of costs of enforcement procedure

Fees of the court enforcement procedure are regulated in the Law on Court Fees (OG MN no. 76/2005).

Law on Court Fees defines the following categories of claims and court fees:

AMOUNT OF THE CLAIM	AMOUNT OF THE FEE
up to 500 euro	20 euro
from 500 to 5,000 euro	20 euro + 2% to the amount over 500 euro
over 5,000 euro	110 euro + 1% to the amount of over 500 euro

The important thing to notice is that the amount of the fee is limited: for the procedure of enforcement within the jurisdiction of the basic court to the amount of 750 euro; and for the procedures of enforcement within the jurisdiction of commercial courts it is limited to the amount of 1,500 euro.

Costs for the enforcement procedures implemented by public enforcement officers are defined in the Decree on the Tariff of Public Enforcement Officers. Unlike the Law on Court Fees, the Decree on the Tariff of Public Enforcement Officers stipulates three categories of remunerations the public enforcement officer is entitled to: (1) remuneration for preparing and managing the case, (2) remuneration for successful enforcement (set depending on the amount of the claim) and (3) remuneration for the undertaken actions (set in a fixed amount regardless of the amount of the claim). Article 34 of the Law on Enforcement and Securing of Claims stipulates that the costs of enforcement procedure are to be covered by the judgment debtor but that the judgment creditor is obliged to pay the advance of the enforcement costs.

The text below compares the costs of the court enforcement procedure and the costs of the procedure of enforcement conducted by public enforcement officers. We have taken into account the costs for the parties and the costs, i.e. impact on the budget.

According to the Rulebook on orientation criteria for determining the necessary number of judges and other staff in courts (OG MN 76/2008, 46/2011 and 49/2011) the number of judges in the court is established on the basis of the average number and type of the cases received in the last three years and the number of cases the judge should solve in a year. The number of advisers in the court is established on the basis of the number of judges, while the number of state employees-enforcement officers is established according to the number of cases - for every 1,000 enforcement cases one employee-enforcement officer.

Thus, when it comes to court enforcement, we have to start from the fact that the fee paid by the creditor is the cost for the party and at the same time, it is the income for the budget. In the system of court enforcement we have the following costs:

- costs of gross salaries for enforcement judges, court advisers and employees
- material costs (office supplies, travel costs, etc.)

The table below shows the relation between the costs (incomes and expenditures) in case of court enforcement and in case of enforcement conducted by public enforcement officers. As an example we took the claim of 1,500 euro.

COURT ENFORCEMENT	PUBLIC ENFORCEMENT
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			OFFICERS	
(1) Revenue for the budget/cost for the party	Expenditure from the budget		(4) Income for public enforcement officer/cost for the party	(5) Expenditure for public enforcement officer/ revenue to the budget
	(2) Type of cost	(3) Amount		
20.00 euro (court fee)	Judge	8.50 euro	60.00 euro (with VAT)	9.58 euro (VAT)
	Adviser	4.60 euro		
	State employee	1.50 euro		
	Material costs	1.16 euro		

(1) Court fee includes 10-euro fee for the motion for enforcement and 10-euro fee for the decision in the enforcement procedure.

(2) Expenditure from the budget includes the costs for salaries of the participants in the court enforcement procedures: judges, advisers and state employees.

(3) In calculating these costs we started from the following amounts of gross salaries:

- enforcement judge - 1,500 euro
- adviser - 810 euro
- state employee - 550 euro

As the norm we took the following time required by each of the above per one enforcement case:

- enforcement judge - 60 minutes
- adviser - 60 minutes
- state employee - 30 minutes

Total gross cost of these persons per one case (expenditure of the budget) amounts to 14.60 euro. Material costs are calculated in the amount of 8% of the above. The total expenditure is 15.76 euro.

(4) Income of public enforcement officer, which is at the same time a cost for the party is calculated in the following way:

- remuneration for preparing and managing the case - 25 euro
- remuneration for the undertaken actions (writ of enforcement) - 20 euro
- remuneration for the undertaken actions (decision) - 15 euro

The only thing that is not taken into account is the remuneration of the public enforcement officer for successful enforcement because it is paid only if the enforcement is successful.

The total amount of the costs for the party is 60.00 euro with the VAT.

(5) revenue for the budget is the amount of the VAT - 9.58 euro

Thus, in the procedure of court enforcement, if we deduct the budget expenditures from the budget revenues, we get the amount of 4.76 euro. The revenue to the budget in the system of public enforcement officers is 9.58 euro, i.e. it is by 4.82 euro higher than in the case of court enforcement. However, on top of the VAT, which is the revenue for the budget, public enforcement officer also pays compulsory contributions for social and health insurance for him/herself and his/her employees. he/she will also pay the profit tax in the end of financial year. These two amounts will be analysed after the public enforcement officers start working.

Conclusion

The Ministry of Justice is given the task to prepare the Decree on the Amendments to the Decree on the Tariff of Public Enforcement Officers before the public enforcement officers start working so that it can be ensured that the enforcement procedure is cost efficient for the parties in the procedure and that the amount of the enforcement costs is not an obstacle to the exercise of rights.

The Ministry of Justice is given the task to amend the Rulebook on the operation of public enforcement officers, by stipulating the electronic record keeping of the data on the enforcement cases so that the adequate and precise collection of statistics is ensured for the reporting purposes.

The Ministry of Justice is given the task to submit an initiative to the Ministry of Finance to amend the Law on Administrative Fees in order to ensure that no administrative fee is charged for the collection of data on the judgment debtor from the official records.

The Ministry of Justice is given the task to carry out the procedure of appointment of public enforcement officers by the end of 2013.