

LIABILITY OF A COURT ENFORCEMENT OFFICER AND THE STATE TREASURY FOR DAMAGE CAUSED IN THE PERFORMANCE OF A COURT ENFORCEMENT OFFICER DUTIES

ZBIGNIEW KUNIEWICZ*
ADRIANA TOMCZYK**

DOI 10.2478/in-2024-0030

ABSTRACT

The purpose of this article is to clarify doubts surrounding the liability of the court enforcement officer and the State Treasury for damages under Article 36 of the Act on Court Enforcement Officers. It considers the constitutional model of liability for damages caused by unlawful actions of a public authority, as well as civil law regulations concerning the general rules for compensating damage. The conclusions drawn from the discussion in this article include, *inter alia*, the following findings: (i) Article 36 CEOA provides an independent basis for the tort liability of a court enforcement officer, premised on the unlawfulness of the court enforcement officer's conduct, regardless of fault; (ii) damage subject to compensation under Article 36 CEOA includes any damage to the legally protected goods of the affected entity, encompassing both material and non-material damage (i.e., compensation for harm suffered); (iii) in relation to this liability, a narrow interpretation of unlawfulness should be applied, one that references the constitutional approach to the sources of law (Articles 87–94 of the Constitution).

Keywords: tort liability for damages, liability of a body of public authority, liability of a court enforcement officer

* LLD hab., Professor of the University of Szczecin, Faculty of Act and Administration, University of Szczecin (Poland), e-mail: zbigniew.kuniewicz@usz.edu.pl, ORCID: 0000-0003-0793-9937

** LLD, Faculty of Act and Administration, University of Szczecin (Poland), e-mail: adriana.tomczyk@usz.edu.pl, ORCID: 0000-0002-2467-980X; attorney at law, Szczecin Bar Association



INTRODUCTION

The model of liability for damages caused by a court enforcement officer, as set out in Article 36 of the Act of 22 March 2018 on Court Enforcement Officers (CEOA)¹ along with the joint and several liability of the State Treasury covers damages caused by unlawful actions or omissions during the performance of a court enforcement officer's duties. The current legal framework for this liability concretises the constitutional norm set forth in Article 77(1) of the Constitution,² which serves as the basis for the liability of public authorities for unlawful actions.

Article 23 of the Act on Court Enforcement Officers and Execution (CEOEA) of 29 August 1997 was a predecessor of Article 36 CEOA.³ It should be noted that from the entry into force of the 1997 Act until 27 January 2004, a dual regulation regarding the liability of court enforcement officers for damages was in place. This issue was governed both by Article 23 CEOEA and by Article 769 of the Code of Civil Procedure (CCP),⁴ which in subsection 1 required the court enforcement officer to remedy damage caused intentionally or through negligence if the injured party could not, during the course of proceedings, prevent the damage by measures outlined in the Code of Civil Procedure. Furthermore, Article 769(2) CCP provided for the joint and several liability of the State Treasury and the court enforcement officer for damage caused by the court enforcement officer. This state of affairs remained in force until Article 769 CCP lost its legal force. This provision was declared unconstitutional by the judgment of the Constitutional Tribunal of 20 January 2004,⁵ because it established the court enforcement officer's liability for damages by reliance on the principle of guilt ('intentionally or through negligence'), which, in the light of Article 77(1) of the Constitution, is inadmissible. The solution adopted in statutory regulations cannot narrow down the liability of public authorities compared to the measures laid down in constitutional provisions. In response, the Act of 24 September 2004, which amended the 1997 Act on Court Enforcement Officers and Execution,⁶ reinstated the legal construct of joint and several liability of the State Treasury, which had been previously codified under Article 769 CCP. Article 23 CEOEA was supplemented with subsection 3, which stated: 'The State Treasury shall bear joint and several liability for damages together with the court enforcement officer.' This provision of Article 23 CEOEA remained unchanged until the law was repealed on 1 January 2019.

¹ Consolidated text, Journal of Laws of 2022, item 1168; hereinafter 'CEOA'.

² Pursuant to Article 77(1) of the Constitution, '[e]veryone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.'

³ Consolidated text, Journal of Laws of 2018, item 1309; hereinafter 'CEOEA'. Pursuant to Article 23(1), '[t]he court enforcement officer is obliged to repair the damage caused by act or omission contrary to Act in his performing of activities,' whereas pursuant to Article 23(2), '[t]he substitute of the court enforcement officer shall bear liability as the court enforcement officer for activities they have performed.'

⁴ The Act of 17 December 1964, consolidated text, Journal of Laws of 2021, item 1805; hereinafter 'CCP'.

⁵ SK 26/03, OTK-A, 2007, No. 1, item 3.

⁶ Journal of Laws, No. 236, item 2356.

Following the recognition of the unconstitutionality of Article 769 CCP, the legal scholarship and judicial decisions developed under that provision became obsolete. However, a comparison between the provisions of Article 36 CEOA and Article 23 CEOEA that is no longer in force reveals significant differences in essential aspects of the nature and premises of the liability of court enforcement officers and the State Treasury for damages. This observation supports the claim that the views of legal scholars and commentators and judicial decisions regarding the former Article 23 CEOEA remain valid.

Given the above, the purpose of this study is to clarify certain doubts regarding the court enforcement officer's and the State Treasury's liability for damages under Article 36 CEOA. The discussion will focus on the legal nature and premises of this liability, as well as its material scope.

In line with the fundamental thesis adopted in this text, the court enforcement officer's liability, along with the joint and several liability of the State Treasury under Article 36 CEOA, fits within the model of tort liability for damages. In addition to Article 36 CEOA, when specifying the normative framework of this liability, reference must also be made to constitutional provisions that address public authority's liability for damages, as well as to provisions of the Civil Code concerning general rules for compensation.

LEGAL STATUS OF A COURT ENFORCEMENT OFFICER

From the perspective of determining the legal nature of a court enforcement officer's liability for damages, the key lies in defining his legal status under the 2018 Act on Court Enforcement Officers. As was the case under the Act on Court Enforcement Officers and Execution of 29 August 1997, it is beyond doubt that a court enforcement officer holds the status of a public official in all spheres of his activity (Article 2(1) CEOA). Moreover, *de lege lata*, unlike in the 1997 Act on Court Enforcement Officers and Execution, the court enforcement officer is also considered a body of public authority when performing activities in enforcement and injunction proceedings, except where provided otherwise by separate provisions (Article 3(1) CEOA).⁷ This is because the legislator has endowed the officer with specific, authority-bearing competences characteristic of public authority. A court enforcement officer, as part of his duties and functions, exercises authority-bearing powers over other subjects of legal relations, despite not being part of the judiciary. When performing the activities stipulated by the Act, the court enforcement officer is not bound by a private law relationship (e.g., mandate) with the parties to the enforcement proceedings, but rather by a relationship governed by public law.

⁷ See Jabłoński, M., 'Rozdział 2. Komornik sądowy – funkcjonariusz publiczny czy "trójkształtny fenomen polskiego systemu prawa"', in: Marciniak, A. (ed.), *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, Sopot, 2018, p. 51 *et seq.*; Staszewska, E., 'Rozdział 3. Charakter prawny służby komorniczej', in: Marciniak, A. (ed.), *Analiza i ocena...*, op. cit., Sopot, p. 69 *et seq.*

The legislator's designation of the court enforcement officer as a body of public authority justifies consideration of his systemic position in light of constitutional provisions, particularly Articles 7 and 77(1) of the Constitution. Article 7 of the Constitution, which expresses the principle of legalism, provides that '[t]he organs of public authority shall function on the basis of, and within the limits of, the law.' Meanwhile, Article 77(1) of the Constitution states that '[e]veryone shall have the right to compensation for any harm done to them by any action of an organ of public authority contrary to law.' It is worth noting that the constitutional provision in Article 77(1) of the Constitution belongs to the group of constitutional norms that hold a superior position in the internal hierarchy of constitutional norms due to its placement in the systemic organisation of the basic law (Chapter II of the Constitution, entitled 'Freedoms, Rights and Obligations of Persons and Citizens.' This provision not only serves as a constitutional safeguard for individual freedoms and rights, but also establishes a personal right to compensation for damage caused by the unlawful actions of public authorities.⁸

The recognition of the court enforcement officer as a body of public authority implies that statutory regulations must take into account the content of Article 77(1) of the Constitution, which outlines the constitutional model of public authority's liability for damages. This model is not simply a confirmation or declaration of the idea of liability; rather, it possesses its own normative significance. The correct interpretation of Article 77(1) of the Constitution should, therefore, aim for such reading of the sense of the analysed provision that will consider its specific legal weight.⁹ Given the hierarchical structure of legal norms, and the fact that Article 77(1) of the Constitution is not merely a reflection of general rules, its content must be considered when interpreting Article 36 CEOA.¹⁰

Liability for damages under Article 77(1) of the Constitution is based on an objective assessment of the injuring party's conduct, specifically the failure to comply with the law, regardless of whether fault is present.¹¹ The established line of judicial decisions by the Constitutional Tribunal and the Supreme Court emphasises that the stricter conditions for liability of public authorities in Article 77(1) of the Constitution (as opposed to general fault-based liability) are justified by the special,

⁸ See judgment of the Constitutional Tribunal of 20 January 2004, SK 26/03, *OTK-A*, 2007, No. 1, item 3; Garlicki, L., *Polskie prawo konstytucyjne: zarys wykładu*, Warszawa, 2019, p. 45; Garlicki, L., 'Normy konstytucyjne relatywnie niezmiennalne', in: Trzcziński, J. (ed.), *Charakter i struktura norm konstytucyjnych*, Warszawa, 1997, pp. 137–155; Działocha, K., 'Hierarchia norm konstytucyjnych i jej rola w rozstrzygnięciu kolizji norm', in: Trzcziński, J. (ed.), *Charakter i struktura norm konstytucyjnych*, Warszawa, 1997, pp. 79–92.

⁹ A slightly different view was expressed by the Constitutional Tribunal in its judgment of 24 February 2009, SK 34/07, *OTK ZU*, 2009, No. 37, item 296.

¹⁰ As seen aptly in the judgment of the Constitutional Tribunal of 4 December 2001, SK 18/00, *OTK ZU*, 2001, No. 8, item 256.

¹¹ See judgments of the Constitutional Tribunal: of 4 December 2001, SK 18/00, *OTK*, 2001, No. 8, item 256; of 7 October 2003, K 4/02, *OTK-A*, 2003, No. 8, item 80; of 20 January 2004, SK 26/03, *OTK-A*, 2004, No. 1, item 3; of 24 February 2009, SK 34/07, *OTK-A*, 2009, No. 2, item 10; Bagińska, E., Bień-Kacała, A., 'Głosa do wyroku Trybunału Konstytucyjnego z dnia 20 stycznia 2004, SK 26/03', *Przegląd Sejmowy*, 2004, No. 4, p. 120; Zembrzusi, T., in: Jagieła, J. (ed.), *Sądowe postępowanie egzekucyjne. Nowe wyzwania i perspektywy*, Warszawa, 2020, p. 155.

service-oriented role of these authorities in safeguarding the rights and values of individuals and citizens. Any attempt to introduce a statutory requirement of fault as an additional condition for liability would lead to a limitation of the constitutional framework for the protection of these rights and freedoms.¹² Furthermore, the provision discussed has a guarantee function, reinforcing the principle of legalism enshrined in Article 7 of the Constitution.

OBJECTIVE NATURE OF LIABILITY OF THE COURT ENFORCEMENT OFFICER

Both the judiciary and legal literature emphasise that the liability of the court enforcement officer under Article 36 CEOA, for damages caused while performing activities vested in him under public law, constitutes tort liability.¹³ This view is justified by the following: first, the court enforcement officer is appointed to enforce judicial rulings through the compulsory execution of monetary and non-monetary performances, as well as other activities specified in statutes; second, in a rule of law, the compulsory execution of sentences in civil matters is not conducted through individual actions of the creditor or persons to whom the creditor commissions the execution of the judgment. The tortious nature of this liability does not undermine the normative status of the court enforcement officer as a public official and a body of public authority.

The liability of the court enforcement officer under Article 36 CEOA is based on the premise of the unlawfulness of his conduct and is independent of fault.

¹² See judgment of the Constitutional Tribunal of 4 December 2001, SK 18/00, *OTK*, 2001, No. 8, item 256; judgments of the Supreme Court: of 8 January 2002, I CKN 581/99, *OSNC*, 2002, No. 10, item 128; of 27 March 2003, V CKN 41/01, *OSNC*, 2004, No. 6, item 96.

¹³ See judgment of the Constitutional Tribunal of 20 January 2004, SK 26/03, *OTK-A*, 2004 No. 1, item 3; Resolution of the Supreme Court of 13 October 2004, III CZP 54/04, *OSNC*, 2005, No. 10, item 168; judgments of the Supreme Court: of 3 March 2005, II CK 634/04, *Legalis*, No. 246052; of 27 March 2009, III CSK 376/07, *Legalis*, No. 140138; of 10 February 2010, V CSK 279/09, *Legalis*, No. 350666; of 13 December 2012, V CSK 7/12, *Legalis*, No. 667429; of 5 February 2014, V CSK 172/13, *Legalis*, No. 993314; of 9 November 2016, II CSK 39/16, *Legalis*, No. 1550005; of 9 November 2016, II CSK 775/15, *Legalis*, No. 1565014; judgments of the Administrative Court: in Gdańsk of 5 November 2019, V ACa 153/18, *Legalis*, No. 1886915; in Warsaw of 28 August 2018, V ACa 758/17, *Legalis*, No. 1852313; in Szczecin of 7 June 2018, I ACa 103/17, *Legalis*, No. 2177446; in Białystok of 15 September 2017, I ACa 522/16, *Legalis*, No. 1674195; in Szczecin of 20 November 2014, I ACa 467/14, *Legalis*, No. 1241607; in Szczecin of 11 July 2013, I ACa 103/13, *Legalis*, No. 776432; in Białystok of 26 June 2013, I ACa 284/13, *Legalis*, No. 736057; in Szczecin of 23 April 2013, I ACa 12/13, *Legalis*, No. 687922; Bieluk, J., 'Rozdział 9. Odpowiedzialność odszkodowawcza komornika w nowej regulacji prawnej', in: Marciniak, A. (ed.), *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, Sopot, 2018, p. 205; Marciniak A., *Odpowiedzialność odszkodowawcza komornika sądowego w prawie polskim*, Sopot, 2020, p. 36; Knypl, Z., 'Jeszcze o odpowiedzialności odszkodowawczej komornika', *Problemy Egzekucji*, 2001, No. 18, pp. 67–68; Rzaśa, G., 'Odpowiedzialność odszkodowawcza komornika – suplement (po wyroku Trybunału Konstytucyjnego z 20 stycznia 2004 r.)', *Radca Prawny*, 2004, No. 2, p. 87; Kuczyński, G., in: Świczkowski, J. (ed.), *Ustawa o komornikach sądowych i egzekucji*, Warszawa, 2012, p. 139; Simbierowicz, M., in: Simbierowicz, M., Świtkowski, M. (eds), *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*, LEX 2020, commentary to Article 36(2).

This form of liability arises, on the one hand, from the legal status of the court enforcement officer as a body of public authority and, on the other, from the need to align Article 36 CEOA with constitutional norms, particularly Article 77 of the Constitution.

It should be noted that not all inappropriate behaviours by court enforcement officers will be deemed contrary to law. The concept of 'being contrary to law' must be understood as behaviour that violates orders or prohibitions stemming from a legal norm. According to the prevailing views among legal scholars, commentators, and the judiciary, unlawfulness, as a premise for the liability of a public authority, must be interpreted strictly, with reference to the constitutional approach to sources of law (Articles 87–94 of the Constitution). Thus, actions or omissions that violate provisions of the Constitution, statutes, ratified international agreements, regulations, acts of local law, or universally binding provisions of European law will be deemed unlawful. Under Article 36 CEOA, this narrow interpretation of unlawfulness must be applied, rather than the broader understanding traditionally adopted in civil law, which includes breaches of moral and customary norms, referred to as 'principles of social coexistence' or 'good mores'.¹⁴

ARTICLE 36 CEOA AS A BASIS OF LIABILITY

An analysis of Article 36 CEOA leads to the conclusion that this provision meets the statutory requirements to qualify as an independent basis for the liability of a court enforcement officer.¹⁵ This article sets out both the personal and material premises that underpin the court enforcement officer's liability for damages. However, this does not mean that the provision in question offers a comprehensive regulation of such liability. Article 36 CEOA does not define, as the legislator intended, the

¹⁴ E.g., Constitutional Tribunal in judgments: of 4 December 2001, SK 18/00, *OTK*, 2001, No. 8, item 256; of 23 September 2003, K 20/02, *OTK-A*, 2003, No. 7, item 76; and the Supreme Court in judgment of 8 January 2002, I CKN 581/99, *OSP*, 2002, No. 11, item 143; Administrative Court in Warsaw in its judgment of 19 March 2014, VI ACa 1178/13, *Legalis*, No. 993843; Radwański, Z., Olejniczak, A., Grykiel, J., *Zobowiązania – część ogólna*, Warszawa, 2022, pp. 233–234; Ciepła, H., Skibińska-Adamowicz, J., 'Status prawny komornika i podstawy jego odpowiedzialności odszkodowawczej po uchyleniu art. 769 k.p.c.', *Przegląd Prawa Egzekucyjnego*, 2006, No. 4–6, p. 17; Bieluk, J., 'Rozdział 9...', op. cit., p. 208; Pytel, A., "'Czyj zysk, tego ryzyko" – czy istnieją określone granice odpowiedzialności komornika sądowego?', *Przegląd Prawa Egzekucyjnego*, 2017, No. 10, pp. 49 and 56; Kuczyński, G., in: Świczkowski, J. (ed.), *Ustawa...*, op. cit., p. 140; Marciniak, A., *Ustawa o komornikach sądowych i egzekucji. Komentarz*, Warszawa, 2014, p. 158; Knypl, Z., Merchel, Z., *Komentarz do ustawy o komornikach sądowych i egzekucji*, Sopot, 2015, pp. 221 and 222; Simbierowicz, M., in: Simbierowicz, M., Świtkowski, M. (eds), *Ustawa...*, op. cit., commentary to Article 36(3); Rybicka-Pakuła, M., in: Świczowska-Wójcikowska, M., Świczkowski, J. (eds), *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Kodeks Etyki Zawodowej Komornika Sądowego. Komentarz*, LEX, 2020, commentary to Article 36(12).

¹⁵ Such a view was also expressed under Article 23 CEOEA and remains valid for Article 36 CEOA – see judgments of the Supreme Court: of 30 October 2014, II CSK 60/14, *OSNC*, 2015, No. 10, item 123; of 24 June 2015, II CSK 544/14, *OSNC*, 2016, No. 6, item 76; a different stance in, e.g., judgment of the Administrative Court in Poznań of 11 August 2017, I ACa 1568/16, *Legalis*, No. 1714493; Marciniak, A., *Ustawa...*, op. cit., p. 158; Bieluk, J., 'Rozdział 9...', op. cit., p. 206.

fundamental concepts involved in the legal construct of liability for damages. For these, one must refer to the provisions of the Civil Code, which establish the general rules governing this liability (such as the concept of damage, causation, and the injured party's contribution to the emergence of the damage, etc.).

The principle of full compensation for damage, as expressed in Article 361(2) of the Civil Code, applies to liability for damages under Article 36 CEOA. This means that the court enforcement officer's obligation to provide compensation includes both the losses actually suffered by the aggrieved party (*damnum emergens*) and the benefits that would have been achieved if the damage had not occurred (*lucrum cessans*).¹⁶ The damage referred to in Article 36 CEOA encompasses all harm caused to the legally protected interests of the affected entity, covering both material and non-material losses (i.e., compensation for the harm suffered). This broad interpretation of damage under Article 36 CEOA is consistent with the constitutional model of liability for damages caused by unlawful actions of a public authority.¹⁷

However, the court enforcement officer's liability for damages under Article 36 CEOA does not extend to the costs associated with the court enforcement officer's activities or obligations arising from the employment of personnel necessary to operate his office, protect his property, or assist in field activities, whether under employment contracts or civil law agreements (Article 153(1) CEOA). The aggrieved parties may include not only the parties to the proceedings and participants in enforcement proceedings but also individuals who have suffered losses as a result of the activities carried out by the court enforcement officer.¹⁸

An essential element shaping the court enforcement officer's liability for damages under Article 36 CEOA is the requirement that his action or omission occurs 'while performing his activities'. The formula applied in Article 36 CEOA is found in provisions of the Civil Code regulating tort liability of persons who entrust the performance of activities to third persons (Articles 429 and 430 CC), as well as in provisions concerning liability for damage caused while exercising public authority (Article 417(1) CC). The phrase 'while performing activities' signifies that there is a functional link between the activity performed and the resulting damage.¹⁹ It is important to bear in mind that, according to Article 3 CEOA, the court enforcement officer performs activities in execution and injunction proceedings, as well as other

¹⁶ See Warkało, W., *Odpowiedzialność. Funkcje, rodzaje, granice*, Warszawa, 1972, p. 123; Kaliński, M., 'Odpowiedzialność odszkodowawcza', in: Olejniczak, A. (ed.), *System Prawa Prywatnego. Tom 6. Prawo zobowiązań – część ogólna*, Warszawa, 2018, p. 18.

¹⁷ The same also in Górski, A., 'Odpowiedzialność Skarbu Państwa za szkodę wyrządzoną przez komornika działającego w charakterze organu egzekucyjnego', *Palestra*, 2003, No. 11–12, p. 93; Zembrzusi, T., op. cit., p. 156; Marciniak, A., *Ustawa...*, p. 158; Marciniak, A., *Odpowiedzialność...*, op. cit., p. 42; Ciepła, H., Skibińska-Adamowicz, J., 'Status prawny...', op. cit., p. 21; Bieluk, J., 'Rozdział 9...', op. cit., p. 210; Kuczyński, G., in: Świczekowski, J. (ed.), *Ustawa...*, op. cit., p. 140; Knypl, Z., Merchel, Z., *Komentarz...*, op. cit., pp. 224–225; Simbierowicz, M., in: Simbierowicz, M., Świtkowski, M. (eds), *Ustawa...*, op. cit., commentary to Article 36(5). See also judgment of the Constitutional Tribunal of 4 December 2001, SK 18/00, OTK, 2001 No. 8, item 256.

¹⁸ Judgment of the Administrative Court in Poznań of 11 August 2017, I ACa 1568/16, LEX No. 1714493.

¹⁹ E.g., Radwański, Z., Olejniczak, A., Grykiel, J., *Zobowiązania...*, op. cit., pp. 224–225.

activities assigned to him by the legislator. In Article 36 CEOA, when referring to 'activities', the legislator does not use a detailed qualifier, which supports the argument that the court enforcement officer's liability for damages arises during the performance of any activity. Therefore, this liability is not limited to execution proceedings in the 'narrow sense that includes only compulsory activities directly aimed at satisfying the creditor'.²⁰

In situations where the court enforcement officer causes damage 'while' performing his activities, the court enforcement officer's liability for damages is based on general rules set out in the Civil Code,²¹ such as in the case of damage to the debtor's property during the attachment of movable property.

The qualification of the court enforcement officer's liability under Article 36 CEOA as liability for damages leads to the conclusion that an adequate causal link is a necessary premise for its emergence. The existence of a causal link is not negated by the possibility of a supervening cause (hypothetical *causa superveniens*), which refers to a hypothetical event occurring after the actual cause of the damage.²² Therefore, it is inadmissible for the court enforcement officer to invoke a supervening cause, such as the claim that a legally conducted execution would have achieved the same result in satisfying the creditor.

A court enforcement officer cannot release himself from liability to the aggrieved party for damages under Article 36 CEOA by arguing that he performed the activities in compliance with court orders intended to ensure the proper conduct of enforcement under judicial supervision (Article 759(2) CCP). The fact that the court enforcement officer is entitled to seek recourse against the State Treasury (under the third sentence of Article 36(2) CEOA) when the damage was caused solely as a result of the court enforcement officer's compliance with court orders or administrative supervisory bodies does not alter the rules of joint and several liability of the court enforcement officer and the State Treasury towards the aggrieved party.

²⁰ E.g., the Supreme Court, under the previous provision of Article 23 CEOEA (now Article 36 CEOA), in its judgment of 24 June 2015, II CSK 544/14, OSNC, 2016, No. 6, item 76. Similarly, also Bagińska, E., *Odpowiedzialność odszkodowawcza za wykonywanie władzy publicznej*, Warszawa, 2006, pp. 451–452; Górski, A., *Odpowiedzialność...*, op. cit., p. 92; Bieluk, J., 'Rozdział 9...', op. cit., p. 209; Pytel, A., "'Czyj zysk, tego ryzyko'...", op. cit., p. 48; Marciniak, A., *Ustawa...*, pp. 158–159; Knypl, Z., Merchel, Z., *Komentarz...*, op. cit., p. 224; Świtkowski, M., in: Simbierowicz, M. (ed.), *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*, 2023, LEX/el., commentary to Article 36(3). See also Supreme Court judgment of 30 October 2014 (II CSK 60/14, OSNC, 2015, No. 10, item 123), in which the Court expressed an apt assessment that in the light of Article 36 CEOA a behaviour contrary to the Act may include an activity that involves establishment and collection of execution charges.

²¹ See Marciniak, A., *Odpowiedzialność...*, op. cit., pp. 48 and 49; Ciepła, H., Skibińska-Adamowicz, J., 'Status prawny...', op. cit., p. 22; Tomalak, W., *Status ustrojowy i procesowy komornika sądowego*, Warszawa, 2014, p. 175; Bieluk, J., 'Rozdział 9...', op. cit., p. 210; Rybicka-Pakuła, M., in: Świeczkowska-Wójcikowska, M., Świeczkowski, J. (eds), *Ustawa...*, op. cit., commentary to Article 36(7).

²² See more in Koch, A., in: Gutowski, M. (ed.), *Kodeks cywilny. Vol. II. Komentarz. Art. 353–626*, Legalis, 2022, commentary to Article 361 CC, nb. 31–36; Machnikowski, P., in: Machnikowski, P. (ed.), *Zobowiązania. Przepisy ogólne i powiązane przepisy Księgi I KC. Tom I. Komentarz*, Legalis, 2022, commentary to Article 361 CC, nb. 73–139.

The dismissal of a complaint against the court enforcement officer's actions that caused damage does not constitute a circumstance excluding the officer's liability (Article 767 CCP).²³ In a case ruled on by the Supreme Court on 16 March 2007 (III CSK 381/06), the plaintiff's claim against the court enforcement officer concerned the fact that a public auction was held before the description and appraisal of the property became final and non-revisable (Article 952 CCP). Although the complaint against the description and appraisal was dismissed, this occurred after the court enforcement officer had conducted the public auction. The Supreme Court, disagreeing with the legal assessment of the lower courts, unequivocally held that conducting a public auction in violation of Article 952 CCP, before the description and appraisal became final and non-revisable, could not be characterised as a mere 'minor failure on the part of the court enforcement officer'. The officer's conduct was unlawful, and once the remaining premises (existence of damage and a causal link) were met, it gave rise to liability for damages. What is particularly noteworthy is the Supreme Court's observation that under current law, filing complaints against a court enforcement officer's flawed actions does not determine the emergence of liability for damages. In the main thesis of its explanatory memorandum, the Supreme Court aptly stated that 'the court's erroneous dismissal of the complaint against the court enforcement officer's actions that caused the damage does not exclude the court enforcement officer's liability for damages under Article 23 of the Act of 29 August 1997 on Court Enforcement Officers and Execution (now Article 36 CEOA).'

JOINT AND SEVERAL LIABILITY OF THE STATE TREASURY

The guarantee provided by Article 77(1) of the Constitution, as discussed earlier, and the statutory obligation of supervision over court enforcement officers carried out by the court as an organ of the judiciary, justify the existence of joint and several liability of the State Treasury alongside the court enforcement officer. Article 36(2) CEOA is an independent basis for the joint and several liability of the court enforcement officer and the State Treasury, constituting *lex specialis* – within the meaning of Article 421 CC – in relation to Articles 417–417² CC, application of which is then excluded.

The State Treasury's liability under Article 36 CEOA is for a third person's act. The State Treasury is liable for damages once the conditions determining the liability of the court enforcement officer are met. This means that liability arises when damage is caused as a result of the court enforcement officer's unlawful action or omission while performing his duties, and when there is a direct causal link between the incident and the damage. The aggrieved party may then – at their discretion – sue either or both debtors who bear joint and several liability for the damage. The State Treasury's liability does not replace the liability of the court enforcement officer but

²³ Cf. judgment of the Supreme Court of 22 February 2006, III CSK 381/06, OSNC, 2008, No. 2, item 28 – which, despite being issued under Article 23 CEOEA, is still valid *de lege lata*.

exists alongside it, meaning that the court enforcement officer is not released from liability by the existence of the State Treasury's liability.²⁴

The court enforcement officer's and the State Treasury's joint and several liability for damages also extends to the actions or omissions of assessors, including an assessor acting as a substitute court enforcement officer, and individuals employed by the court enforcement officer under a contract of employment or civil law agreement to carry out activities related to enforcement proceedings. Moreover, this liability covers the actions of a substitute court enforcement officer appointed under Article 43(1) CEOA (Article 36(3) CEOA). However, the substituted court enforcement officer and the State Treasury are not liable for the actions or omissions of a substitute court enforcement officer if the substitute is another court enforcement officer.²⁵

The approach adopted by the legislator concerning the liability of a substitute court enforcement officer who is an assessor is justified by two considerations. Firstly, the substitute acts on behalf of the substituted court enforcement officer. Secondly, the court enforcement officer, rather than the assessor, is covered by mandatory third-party insurance for damages that may be caused in connection with activities attributed to the court enforcement officer by statute. Additionally, the insurance period for which the court enforcement officer is covered also extends to the actions or omissions of assessors (Article 37(1) CEOA).

However, it must be noted that the liability of the State Treasury does not cover the court enforcement officer's obligations arising from the employment of persons necessary to run his office, or from entities required to protect his property or assist him in field activities under an employment contract, specific work contract, mandate contract, or service contract, nor does it cover the costs of his operations (Article 153(4) CEOA).

The current regulations, in contrast to the 1997 Act on Court Enforcement Officers and Execution, set out rules for settling recourse claims between the court enforcement officer and the State Treasury. Pursuant to the second sentence of Article 36(2) CEOA, the existence of recourse claims is determined by whether 'the damage was caused solely as a result of the court enforcement officer's compliance with court orders or orders of administrative supervision.' A positive finding on this point means that the court enforcement officer who has compensated for the damage is entitled to a recourse claim against the State Treasury. However, if the damage was remedied by the State Treasury, it is not entitled to a recourse claim against the court enforcement officer. Therefore, other factors, such as fault and the degree to which each party

²⁴ Bagińska, E., 'Istota i przesłanki solidarnej odpowiedzialności Skarbu Państwa za szkody wyrządzone przez komornika sądowego', *Przegląd Prawa Egzekucyjnego*, 2009, No. 11, p. 17; Bagińska, E., *Odpowiedzialność...*, p. 458; judgment of the Supreme Court of 27 October 1971, I CR 427/71, OSNCP, 1972, No. 5, item 88.

²⁵ Under previous regulations, liability for damages caused by the actions of a substitute court enforcement officer was based on uniform rules, regardless of who acted as the substitute court enforcement officer while performing activities. Under Article 23(2) CEOEA, the substitute court enforcement officer bore 'liability as a court enforcement officer for activities that they performed'. This liability was based on the same premises and governed by the same principle of liability that formed the basis of a court enforcement officer's liability.

contributed to the damage, are irrelevant to the allocation of the burden to remedy the damage in the internal relationship between the court enforcement officer and the State Treasury.

The principles governing recourse claims between the court enforcement officer and the State Treasury, as laid down in Article 36(2), do not affect the joint and several nature of their liability for damages, nor the premises that establish this liability.²⁶ This means that in a case for compensation under Article 36(1) CEOA, the court does not examine whether the damage was caused as a result of carrying out court orders or orders of administrative supervision.

The structure of the court enforcement officer's and the State Treasury's recourse claims, as adopted by the legislator, is fully justified by the court enforcement officer's complex legal status and the current scope of judicial and administrative supervision over the court enforcement officer.²⁷ On the one hand, as a public official and a body of public authority, the court enforcement officer exercises state authority in the compulsory execution of rulings; on the other hand, he conducts his activities independently and at his own risk, bearing the costs of running his office.

CONCLUSION

The analysis above has clarified several doubts that may arise regarding the liability for damages under Article 36 CEOA. The central conclusion of this analysis is that this provision constitutes an independent basis for the liability of a court enforcement officer. It is a form of tort liability, based on the premise of the unlawfulness of the officer's actions, meaning that it is independent of fault. The damages to be compensated include all harm to an entity's legally protected interests, encompassing both material and non-material losses (compensation for the harm suffered).

A narrow interpretation of unlawfulness should be adopted in the context of Article 36 CEOA, one that aligns with the constitutional approach to sources of law (Articles 87-94 of the Constitution), rather than the traditional broader understanding, which also includes violations of moral and customary norms, referred to as 'principles of social coexistence' or 'good mores'. The court enforcement officer's

²⁶ Therefore, it is justified to say that 'given such wording (Article 36(3) CEOA – authors' (Z.K., A.T.) note), the State Treasury shall be liable only where the damage was caused solely as a result of the court enforcement officer's compliance with court orders or orders of bodies of administrative supervision' – see Bieluk, J., 'Rozdział 9...', op. cit., p. 215.

²⁷ Under judicial supervision, the court enforcement officer, when performing activities, is bound by the court's rulings, including those issued under Article 759(2) CCP (Article 166(1) CEOA). This provision obligates the court to issue *ex officio* orders to ensure the proper performance of execution, and removes any observed deficiencies. It needs to be noted, however, that the legal assessment expressed in these orders is binding on the court enforcement officer (the second sentence of Article 759(2) CEOA). As regards administrative supervision, the court enforcement officer is subject to supervisory orders from the president of the competent district court, regional court and court of appeals and also orders from the Minister of Justice (Article 168(3) in connection with Article 167(1) CEOA). These orders cannot concern provisions for which the application falls under the court's jurisdiction exercised within the scope of judicial supervision (Article 168(4) CEOA).

liability arises when his action or omission occurs 'while performing activities'. This indicates that his liability is not confined solely to execution proceedings in the narrow sense, which only covers compulsory actions directly aimed at satisfying the creditor.

Under the current provisions of the Act on Court Enforcement Officers, the substituted court enforcement officer bears liability for the actions of a substitute court enforcement officer who is an assessor appointed under Article 43(1) CEOA (Article 36(3) CEOA). However, the substituted court enforcement officer does not bear liability for the actions or omissions of the substitute court enforcement officer if he is another court enforcement officer.

Article 36 CEOA, which is the subject of this analysis, serves not only as a basis for the liability of the court enforcement officer but also as a basis for the joint and several liability of the State Treasury alongside the officer. The principles of making recourse claims between the court enforcement officer and the State Treasury (Article 36(2) CEOA) do not alter the joint and several nature of their liability for damages, nor the premises that determine the emergence of this liability. Furthermore, the court enforcement officer cannot release himself from liability to the aggrieved party for damages under Article 36 CEOA by arguing that he carried out his activities in compliance with court orders intended to ensure the proper conduct of enforcement under judicial supervision (Article 759(2) CCP).

BIBLIOGRAPHY

- Bagińska, E., 'Istota i przesłanki solidarnej odpowiedzialności Skarbu Państwa za szkody wyrządzone przez komornika sądowego', *Przegląd Prawa Egzekucyjnego*, 2009, No. 11.
- Bagińska, E., *Odpowiedzialność odszkodowawcza za wykonywanie władzy publicznej*, Warszawa, 2006.
- Bagińska, E., Bień-Kacała, A., 'Głosa do wyroku Trybunału Konstytucyjnego z dnia 20 stycznia 2004, SK 26/03', *Przegląd Sejmowy*, 2004, No. 4.
- Bieluk, J., 'Rozdział 9. Odpowiedzialność odszkodowawcza komornika w nowej regulacji prawnej', in: Marciniak, A. (ed.), *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, Sopot, 2018.
- Ciepła, H., Skibińska-Adamowicz, J., 'Status prawny komornika i podstawy jego odpowiedzialności odszkodowawczej po uchyleniu art. 769 k.p.c.', *Przegląd Prawa Egzekucyjnego*, 2006, No. 4-6.
- Działocha, K., 'Hierarchia norm konstytucyjnych i jej rola w rozstrzygnięciu kolizji norm', in: Trzciniński, J. (ed.), *Charakter i struktura norm konstytucyjnych*, Warszawa, 1997.
- Garlicki, L., 'Normy konstytucyjne relatywnie niezmiennalne', in: Trzciniński, J. (ed.), *Charakter i struktura norm konstytucyjnych*, Warszawa, 1997.
- Garlicki, L., *Polskie prawo konstytucyjne: zarys wykładu*, Warszawa, 2019.
- Górski, A., 'Odpowiedzialność Skarbu Państwa za szkodę wyrządzoną przez komornika działającego w charakterze organu egzekucyjnego', *Palestra*, 2003, No. 11-12.
- Jabłoński, M., 'Rozdział 2. Komornik sądowy – funkcjonariusz publiczny czy "trójkształtny fenomen polskiego systemu prawa"', in: Marciniak, A. (ed.), *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, Sopot, 2018.

- Kaliński, M., 'Odpowiedzialność odszkodowawcza', in: Olejniczak, A. (ed.), *System Prawa Prywatnego. Tom 6. Prawo zobowiązań – część ogólna*, Warszawa, 2018.
- Knypl, Z., 'Jeszcze o odpowiedzialności odszkodowawczej komornika', *Problemy Egzekucji*, 2001, No. 18.
- Knypl, Z., Merchel, Z., *Komentarz do ustawy o komornikach sądowych i egzekucji*, Sopot, 2015.
- Koch, A., in: Gutowski, M. (ed.), *Kodeks cywilny. Vol. II. Komentarz. Art. 353–626*, Legalis, 2022.
- Kuczyński, G., in: Świeczkowski, J. (ed.), *Ustawa o komornikach sądowych i egzekucji*, Warszawa, 2012.
- Machnikowski, P., in: Machnikowski, P. (ed.), *Zobowiązania. Przepisy ogólne i powiązane przepisy Księgi I KC. Tom I. Komentarz*, Legalis, 2022.
- Marciniak, A., *Odpowiedzialność odszkodowawcza komornika sądowego w prawie polskim*, Sopot, 2020.
- Marciniak, A., *Ustawa o komornikach sądowych i egzekucji. Komentarz*, Warszawa, 2014.
- Pytel, A., "'Czyż zysk, tego ryzyko" – czy istnieją określone granice odpowiedzialności komornika sądowego?', *Przegląd Prawa Egzekucyjnego*, 2017, No. 10.
- Radwański, Z., Olejniczak, A., Grykiel, J., *Zobowiązania – część ogólna*, Warszawa, 2022.
- Rybicka-Pakuła, M., in: Świeczkowska-Wójcikowska, M., Świeczkowski, J. (eds), *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Kodeks Etyki Zawodowej Komornika Sądowego. Komentarz*, LEX, 2020.
- Rząsa, G., 'Odpowiedzialność odszkodowawcza komornika – suplement (po wyroku Trybunału Konstytucyjnego z 20 stycznia 2004 r.)', *Radca Prawny*, 2004, No. 2.
- Simbierowicz, M., in: Simbierowicz, M., Świtkowski, M. (eds), *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*, LEX, 2020.
- Staszewska, E., 'Rozdział 3. Charakter prawny służby komorniczej', in: Marciniak, A. (ed.), *Analiza i ocena ustawy o komornikach sądowych oraz ustawy o kosztach komorniczych*, Sopot, 2018.
- Świtkowski, M., in: Simbierowicz, M. (ed.), *Ustawa o komornikach sądowych. Ustawa o kosztach komorniczych. Komentarz*, 2023, LEX/el.
- Tomalak, W., *Status ustrojowy i procesowy komornika sądowego*, Warszawa, 2014.
- Warkało, W., *Odpowiedzialność. Funkcje, rodzaje, granice*, Warszawa, 1972.
- Zembrzuski, T., in: Jagieła, J. (ed.), *Sądowe postępowanie egzekucyjne. Nowe wyzwania i perspektywy*, Warszawa, 2020.

Cite as:

Kuniewicz Z., Tomczyk A. (2024), *Liability of a court enforcement officer and the State Treasury for damage caused in the performance of a court enforcement officer duties*, *Ius Novum* (Vol. 18) 4, 51–63. DOI 10.2478/in-2024-0030