



The ACTORS OF ENFORCEMENT

The judicial officer plays a key role within the scope of the enforcement of decisions taken by the Belgian Courts and Tribunals.

In civil and commercial matters, he holds a monopolistic position as regards the service of documents and compulsory execution.

The judicial officer can thus be considered as the embodiment of enforcement.

In any “problem” affecting enforcement proceedings, the debtor can always turn to the attachment judge, who will make a decision on the regularity of the procedure.

The powers of the judicial officer can also find expression in the civil aspect of criminal cases.¹

• The judicial officer

1. INDEPENDENT PUBLIC OFFICER

The judicial officer is a public ministerial official who performs his functions under the status of a self-employed professional.

It is only self-employed professionals who are permitted to act independently and impartially, and to thus be subject to a code of ethics. This thus applies to judicial officers, who are, moreover, subject to specific disciplinary measures.

In fact, the judicial officer has a dual professional identity: official and independent.

The independent activity emerges from the exercise of the self-employed profession of judicial officer.

His role, moreover, is public in nature. Furthermore, the legislator has assigned particular exclusive powers to the judicial officer, such as the service of documents. Given that he holds a monopolistic position for various tasks, he cannot refuse to assist a person subject to trial who calls upon his services.

The judicial officer fulfils a specific and active role at the crossroads between executive and judicial power. As he is a self-employed professional, he works independently and impartially. Moreover, his professional experience is available for the service of everyone.

1. The judicial officer will certainly not interfere in the enforcement of criminal judgements which is reserved for specific criminal proceedings.





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In addition to his knowledge and experience, the judicial officer must have academic training and in-depth practical experience (he must hold a Bachelor or Master of Law followed by an internship of two years culminating in an approval examination).

In accordance with Article 516 of the Judicial Code, he serves citations, judgments and rulings in such a way that he can be considered the representative of the judiciary. On the other hand, he is also responsible for the physical enforcement of court decisions, which is an important component of executive power.

2. POWERS OF THE JUDICIAL OFFICER

MINISTERIAL OFFICIAL

► Powers

Judicial officers have monopolistic power for the drafting and service of all writs in the judicial district to which they belong.

Furthermore, they assure the implementation of all court decisions, documents or titles that are legally binding.

Within the scope of the public service of judicial officer, some important principles must be observed:

- As is given to understand by the aforementioned wording “in the judicial district”, his jurisdiction is limited to the territorial jurisdiction of the court of first instance of the place of his residence. When, within the scope of a case, a document has to be served to a debtor who resides in another judicial district, the judicial officer must refer this to a colleague with relevant territorial jurisdiction.
- Due to the fact that a monopolistic position has been assigned to the judicial officer in the performance of his duties, he is obliged to provide his services, every time they are so required and for any person who so requests, unless he has to take action for a relative or relatives in the direct or collateral line up to the fourth degree (Article 517 Judicial Code).

In accordance with Article 1386 of the Judicial Code, the judgements and documents can be implemented on production of the authenticated copy or the minutes, provided with the enforcement order. The right to execute an enforcement order is prescribed for 10 years.

The judicial officer may proceed with the execution of national and foreign notarised deeds declared to be legally binding, foreign court decisions for which an enforcement order has been obtained, arbitration decisions, judgements, rulings, orders and tax constraints.





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Service of writs

The judicial officer is therefore the only ministerial official who is able to serve writs in Belgium.

Examples:

- The judicial officer may issue summons to people. This means to summon someone to appear before a judge.
- The judicial officer may inform a person of a magistrate's decision such as a judgment or a ruling. He will provide the addressee with a copy.

By service, it is meant the issuing of a copy of a document through a writ of the judicial officer (Article 32 Judicial Code). A writ of execution should always be served before an execution can be performed.

The service is subdivided according to the various procedures in the field.

In principle, the judicial officer always tries to serve to **an individual**, to the extent that a copy of the document is thus delivered directly to the addressee (Art. 33 of the Judicial Code). This service may occur at any place where the judicial officer finds the person in question.

Services can always be made to the person, if located in Belgium.

If the service cannot be made to the person, it takes place to the **domicile** or, for want of domicile, **to the residence** of the addressee and, for a corporation, to its registered or administrative office (Art. 35 Judicial Code).

If the judicial officer does not meet with anyone at the domicile or at the residence, he will proceed with the service leaving a copy of the writ, in a sealed envelope, at the domicile or, failing that, at the place of residence. The judicial officer notes on the original of the writ and on the served copy, the date, time and place where the copy has been left. At the latest on the first working day that follows, the judicial officer sends a registered letter to the person served with specific compulsory information (Art. 38 Judicial Code).

If the debtor does not have an (elected) domicile or residence in Belgium, Article 40 of the Judicial Code applies. For service abroad, the judicial officer will send a registered letter or a standard letter to the known address abroad. The despatch of this document via the post equates to its being served.

If the judicial officer does not have a known address either in Belgium or abroad, the service will take place with the Crown Prosecutor.





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In the case of service in Europe, the Belgian judicial officer must, moreover, apply European Regulation No. 1393/2007 on the service and **notification in Member States of judicial and extra-judicial documents in civil or commercial matters.**

Compulsory execution

The judicial officer may, for the compulsory execution of enforcement orders, use the Judicial Code which provides for different enforcement measures.

- Sentence to pay a sum of money

On the basis of an enforcement order, he can serve a payment order, which is generally perceived as the first act of enforcement.

In addition he can then proceed with both a protective and enforceable attachment on movable and/or immovable property.

During a **protective attachment**, what has been noted (immovable or movable property) by the judicial officer in his writ of attachment must be **RETAINED**. Said attachment remains valid for 3 years. It is only during an **enforceable attachment** which has not been fully met that the judicial officer may remove the assets inscribed (only in the case of an order to seize real property - In this context, the judicial officer may be assisted by a locksmith and a police officer who will “lend a hand”, so that the judicial officer may carry out the task at hand) and **SELL THEM PUBLICLY**. The proceeds of this sale will then be shared by the judicial officer between the various debtors according to the applicable legal provisions.

A **garnishment** is also possible. In the case in point, someone, who has to give or pay something to the debtor, is obliged to give the judicial officer the part that is not protected by law. Also in this case, the proceeds will be shared between the various creditors according to the applicable legal provisions.

Example:

At the request of a creditor, the judicial officer may contact the debtor's employer and seize the part of the latter's salary that is not protected by law. The employer then has the duty to surrender the unprotected part of the salary directly to the judicial officer.





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In agreement with his client, the judicial officer will review what will be the best procedure to use. In the case in point, he will take into account the extent and nature of the financial assets of the debtor.

Despite the attachment procedure, the judicial officer will do everything possible to reach an amicable solution (payment scale, deadlines). In case this attempt fails, he should then give definitive effect to the attachment. This might lead to the sale of real property (through a notary) or property seized.

- A sentence to do or not to do something

A sentence *in kind* is not often clear to implement within the context of compulsory execution, but it is possible.

The judicial officer may, for example, ensure that the enforcement of particular work has been completed.

The most important step that can be undertaken, relates in particular to the eviction of tenants due to rent arrears. The Judicial Code determines the procedure.

Public sale

When a public sale of personal property is organised, a judicial officer must be involved.

He will ensure the proper conduct of the sale and auction.

The sales record has authentic value.

► Rate

As already mentioned, the judicial officer is bound to his legal rate for the exercise of his statutory powers.

This rate was determined in the Royal Decree of 30 November 1976 establishing the rate for acts performed by judicial officers in civil and commercial matters as well as that of some benefits. Rates are adjusted annually.

The judicial officer's rate contains among others session fees, fixed fees, costs, proportional fees etc it is thus a matter on the one hand of fees that the judicial officer can record for the work undertaken and on the other hand the reimbursement of costs incurred (e.g. travel costs).





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In practice, the judicial officer always asks the client for a provision to be able to pay the costs to be incurred (Article 4, 4^o AR).

In accordance with Article 1024 of the Judicial Code, these enforcement costs are always borne by the party against whom the enforcement is being made and thus, the judicial officer will always do all that is possible to recover these on behalf of the creditor.

The judicial officer has an ethical obligation to inform the debtor of his expense reports and the legal obligation to provide him with a detailed breakdown.

AS A SELF-EMPLOYED PROFESSIONAL

The judicial officer may also act in his capacity as a freelance worker.

For these tasks, he is competing with other professions (legal), with the result that he is not bound, in this case, to his legal rate.

► Findings

In accordance with Article 516 of the Judicial Code, the judicial officer has jurisdiction to draw up material findings, without issuing an opinion on the legal or factual effects that could arise from these findings.

In concrete terms, the judicial officer describes an existing situation that may sometimes be temporary. He can only report on what he perceives with his own senses. His involvement is thus not as an expert and he can neither give advice nor give judgements. Thus, he must remain as objective as possible without ever carrying out any form of investigation.

The description given by the judicial officer can be used as evidence in existing or forthcoming proceedings; as evidence in insurance matters; as evidence when urgent action must be taken with the effect that the existing situation will change.

Examples:

- You can ask a judicial officer to perform an inventory of an apartment;
- You can ask a judicial officer to observe the progress of construction work.
- You can ask a judicial officer to inspect the damage following the execution of work or after natural disasters.





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In addition, a judicial officer may be appointed by a magistrate to draw up a report.

Example:

A judicial officer may be required, on appointment by a magistrate, to record facts that may be indicative in an adultery case and draw up findings.

Although the jurisdiction to draw up findings is provided for by law, the judicial officer is not obliged to provide this function.

In practice, the judicial officer will still also negotiate the amount of his intervention.

The judicial officer is also often asked to intervene within the scope of a competition or lottery, for example, to report on a record attempt. In this case, he can only make material findings.

Within this context, he can draw up the competition rules and monitor and verify that no irregularities occur.

► Provisional administration

In accordance with Article 488*bis* of the Civil Code, an adult, who on account of his health is no longer able to manage his assets and needs protection, may be placed under provisional administration.

The magistrate will then appoint a person who will temporarily assume the asset management of the protected person.

This does not need to be a professional person, but practice shows that provisional administration involves many difficult tasks, so that choosing a professional administrator receives preference.

Although lawyers are often responsible for this provisional administration, the judicial officer may also intervene within this context.

► Debt mediator

The judicial officer may also be appointed debt mediator.

If a person is accepted by the judge in the collective debt settlement procedure, all enforcement proceedings are suspended and all creditors convened.





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The debt mediator will draw up a plan according to which the debts may be settled, while allowing the debtor to have a sum of money on which to live. In this way, the debtor is offered a chance to overcome the mountain of debt. In some cases, the debtor may even have his debts erased.

In Belgium, a legal rate has been fixed for all debt mediators, which is adjusted each year.

► Out-of-court settlements

For all unpaid debts, it is possible to use a judicial officer. He will attempt to recover the amount of money at stake out-of-court. In order to do this, he sends a letter of demand, commonly called “letter of formal notice”, to the debtor in which he invites the debtor to pay his debt within a given timeframe. If the debtor does not meet this demand, he may be summoned before the judge.

Example:

You can ask a judicial officer to recover the amount of rent arrears.

► Seizure

In accordance with Article 1956 of the Civil Code, the seizure concerns the safeguarding in the hands of a third party, by one or more people, of property, in relation to which a dispute has arisen. These persons undertake to restore the property to whomsoever it must return to in pursuance of the decision, once the dispute has been settled.

The seizure may be contractual or judicial.

In both cases, the judicial officer can be appointed.

► Credit checking

As the judicial officer has access to information and varied databases due to his various jurisdictions, a creditor may approach him to carry out a credit investigation of the debtor.

Within this context, the judicial officer may check whether the debtor in question has already been the subject of a debt recovery case and if he has assets that the creditor could seize.

In this way, the creditor can make a responsible and inexpensive decision as to whether or not to proceed further into the case.





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3. THE RESPONSIBILITY OF THE JUDICIAL OFFICER

Despite his special status, the judicial officer is subject to a set of professional rules. If he violates these rules, he may be punished.

ON A DISCIPLINARY LEVEL

The judicial officer is subject to specific disciplinary measures. If you have dealings with a judicial officer who does not comply with legal or ethical rules, you can complain about it.

You may do this with the Chairman-Legal Adviser or the Reporter of the Council of the Judicial District Chamber of which the judicial officer is a member.

The Council of the Judicial District Chamber will then examine the merits of the complaint. If it is not justified, no disciplinary action will be imposed on the judicial officer concerned. If, however, it is legitimate, a penalty can then be pronounced against him.

The National Chamber of judicial officers of Belgium is not, for its part, a disciplinary body. Thus it is legally impossible for it to intervene in disciplinary proceedings against a judicial officer. The National Chamber is furthermore not a jurisdiction responsible for resolving disputes.

ON A CIVIL OR CRIMINAL LEVEL

A judicial officer may incur civil or criminal liability. He can, regardless of disciplinary proceedings in progress, appear before the Belgian courts.

The judicial officer is personally responsible for all professional misconduct that he commits, unless the damage is the result of force majeure.

As a rule he acts as a paid agent of the party who requires him. His contractual liability is engaged in respect of the latter in the event of professional misconduct.

Furthermore, his liability in tort or tort against third parties may also be engaged.





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• The attachment judge

In accordance with Article 1395 of the Judicial Code, all applications relating to protective attachments and means of enforcement are brought before the attachment judge.

He can only comment on the regularity and legality of the enforcement, even if a dispute is bound thereto. His jurisdiction thus starts from the enforcement – or similar – and ends at the close of the seizure.

The attachment judge can only rule on the merits of the case in certain specific cases provided by law. Thus, he may acquaint himself with disputes concerning claims, during which a third party may argue its ownership rights before the attachment judge to seized property. This also applies to conflicts concerning the order and distribution through contribution.

His jurisdiction to rule on an attachment procedure can only be challenged by a trial judge's decision on the seizure and which has been declared provisionally enforceable. In this case, one may still have recourse to the appeal judge.

The attachment judge's decisions are always provisionally enforceable. This means that his orders must always be enforced provisionally, despite the fact that an appeal might be introduced.

Furthermore, he is responsible for giving judicial authorisation to proceed with the protective attachment, requested by the creditor by means of a unilateral application². This request must be signed by a lawyer. Within 8 days, the attachment judge must give his order.

2. There are some specific exceptions to this principle, for example, the owner who proceeds with the seizure.

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