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OBLIGATORY SUSPENSION OF A POLICE OFFICER FROM OFFICIAL DUTIES

Abstract

This paper focuses solely on issues related to the obligatory suspension of police officers from official duties. The relevant provisions are contained in Art. 39 (1) of the Act of 6 April 1990 on the Police. Suspension from official duties is obligatory when the stage of preparatory proceedings conducted against a police officer changes from *in rem* to *ad personam*. Such change automatically results in loss of impeccable opinion, which is a necessary condition for serving in the Police. Attention is focused on the objective to be achieved by the institution. The limits of the meaning of the phrase "initiation of proceedings against a police officer" were also indicated as a prerequisite for the application of the legal construction of Art. 39 (1) of the Police Act.

Keywords: police, police officer, service in the Police, suspension from official duties, impeccable opinion

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Preliminary issues

Ensuring public security and order is a task of such importance that the legislator has established a special formation for this purpose. As expressly stated in Art. 1 (1) of the Act of 6 April 1990 on the Police,[1] the Police are a uniformed and armed formation serving the public and designed to protect people's security and to maintain public safety and order. As Wojciech Kotowski points out, this is the basic duty of this organisation, which the legislator has obliged it to fulfil.[2] On the other hand, Art. 1 (2) of the Police Act lists the basic tasks of the Police.[3] It should be emphasized that this regulation only indicates the most important duties of the Police and the list contained therein is not exhaustive.[4] The list of tasks is systematically enlarged and modified as changes occur in various spheres, including, in particular, the socioeconomic sphere.[5] However, there is no doubt that the position of the Police, as an organisation obliged to ensure public safety and order, is dominant[6] and, even though other formations are also required to fulfil this obligation, it should be pointed out that their par-

[1] Act of 6 April 1990 on the Police, consolidated text Dz. U. (Journal of Laws) of 2019, item 161, as amended – hereinafter referred to as the Police Act.

[2] Kotowski, W., *Ustawa o Policji. Komentarz*, Warszawa 2008, p. 114.

[3] Dobkowski, J., *Administracja bezpieczeństwa i porządku publicznego*, in: Bednarek, W. (ed.), *Wybrane zagadnienia administracyjnego prawa materialnego*, Olsztyn 2000, p. 139; Jurgilewicz, M.K., *Podstawy systemu organizacyjnego Policji*, in: Letkiewicz, A., Misiuk A. (eds.), *Państwo. Administracja. Policja. Księga pamiątkowa dedykowana Profesorowi Kazimierzowi Rajchelowi*, Szczytno 2012, p. 236; Pieprzny, S., *Policja. Organizacja i funkcjonowanie*, Warszawa 2011, p. 32; Róg, M., Sęk, A., *Materialno-administracyjne aspekty pracy Policji*, Pułtusk–Warszawa 2015, p. 12; Szałowski, R., *Prawnoadministracyjne kompetencje Policji*, Łódź 2010, p. 30.

[4] Hanausek, T., *Ustawa o Policji. Komentarz*, Kraków 1996, p. 19; Opaliński, B., Rogalski, M., Szustakiewicz, P., *Uwagi do art. 1*, in: *Ustawa o Policji. Komentarz*, Warszawa 2015, Legalis; Opaliński, B., Szustakiewicz, P., *Policja. Studium administracyjnoprawne*, Warszawa 2013, p. 27.

[5] The legislator may impose new tasks on the Police, as well as provide it with other competences, with the reservation, however, that the tasks and competences of the Police cannot be presumed – Czuryk, M., Karpiuk, M., Kostrubiec, J., Orzeszyna, K. (eds.), *Prawo policyjne*, Warszawa 2014, p. 55.

[6] Kotowski, W., op. cit., p. 114; a similar opinion is expressed in: Opaliński, B., Szustakiewicz, P., op. cit., p. 26; Róg, M., Sęk, A., op. cit., p. 11; Wiśniewski, B., Piątek, Z. (eds.), *Współczesny wymiar funkcjonowania Policji*, Warszawa 2009, p. 54.

ticipation in achievement of this objective is only of supplementary nature.[7] As Jarosław Dobkowski rightly points out, the Police deals with all or almost all issues related to public safety and order.[8]

Like any other organization, the Police act through its members – police officers. It is their duty to carry out the sub-tasks in accordance with their job descriptions. The sum of these sub-tasks determines the completion of the tasks of each section of a Police unit. The sum of the tasks of individual sections, in turn, determines the completion of the tasks of the entire Police unit. All Police units, in fulfilling the tasks entrusted to them, strive to complete the mission assigned to the Police. The tasks and objectives set for the Police require the legislator to treat separately the issue of employment of officers. The basis for employment in the Police is an appointment. However, there are no references to appointment in Art. 76 of the Labour Code Act of 26 June 1974.[9] Service relationship,[10] which is referred to in the aforementioned article, is fully regulated in the official practices, which are set forth in the Police Act. As indicated at the beginning of this paper, the distinctive characteristics of the basis for employment of Police officers can be found in the purpose for which this organization has been established. While a civilian employer may freely determine the purpose for which an employee is hired, the superior in charge of human resource matters (who is the employing entity) is limited by the provisions of the Police Act, which oblige him or her to carry out the mission of the Police, which is set out in the aforementioned legal provisions. All legal constructions contained in official practices, including the hiring of police officers, must be subordinated to this objective. A different assumption could make it very difficult, or even impossible, for the Police to achieve the objective of ensuring public safety and order. It should also be emphasized that the Police is a formation

[7] According to the doctrine, apart from the Police, the objectives and tasks provided for in the Police Act are fulfilled by other public administration bodies, but only to a limited extent (Maciejko, W., *Osobowe prawo administracyjne*, Warszawa 2008, p. 149; Maciejko, W., Rojewski, M., Suławko-Karetko, A., *Prawo administracyjne. Zarys wykładu części szczególnej*, Warszawa 2011, p. 134).

[8] Dobkowski, J., op. cit., p. 139.

[9] Act of 26 June 1974 – Labour Code, consolidated text: Dz.U. (Journal of Laws) of 2019, item 1040, as amended).

[10] For more information on the service relationship, see: Kuczyński, T., Mazurczak-Jasińska, E., Stelina, J., *Stosunek służbowy*, in: Hauser, R., Niewiadomski, Z., Wróbel, A. (eds.), *System prawa administracyjnego*, Vol. 11, Warszawa 2011. Wieczorek M., *Charakter prawny stosunków służbowych funkcjonariuszy służb mundurowych*, Toruń 2017.

that plays the role of a servant to the public.[11] Service (employment) in the Police should, therefore, be treated as special type of public service. The tasks carried out by the Police are primarily intended to serve the public (to be aimed at achieving this objective). However, the organisation is only able to carry out its statutory tasks through the officers forming its ranks. Thus, the performance of the tasks by the individuals who are members of the Police makes it necessary to apply a special legal bond (to be established between the individual and the Police organisation), which gives Police officers the mandate they need to act on behalf of the state. Therefore, the main purpose of the service relationship is to create conditions that enable full implementation of the tasks set for this organisation.

In Art. 28 (1), the Police Act establishes the appointment of an officer as the basis for his or her employment. An appointment is a strictly administrative relationship[12] that does not result in an employment relation-

[11] Jurgilewicz, M.K., op. cit., p. 236.

[12] Gacek, P., *Nawiązanie stosunku służbowego z funkcjonariuszem Policji*, "Administracja. Teoria – Dydaktyka – Praktyka" 2011, No. 2(23), pp. 76ff; Gacek, P., *Odwołanie od rozkazu personalnego*, "Przegląd Policyjny" 2016, No. 3(123), p. 80 – and the jurisprudence referred to therein; Hanausek, T., et al., *Prawo Policyjne. Komentarz*, Katowice 1992, p. 69; Kacprzak, J., *Stosunki służbowe w formacjach zmilitaryzowanych – charakter prawny, ochrona sądowa*, "Przegląd Policyjny" 1994, No. 1(33), p. 97; Liwo, M., *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warszawa 2013, pp. 311ff; Maciejko, W., Korcz-Maciejko, A., *Postępowanie w sprawach osobowych w Policji*, Wrocław 2010, p. 20; Pływaczewski, W., Kędzierska, G. (eds.), *Leksykon policyjny*, Szczytno 2001, p. 304; Szustakiewicz, P., *Istota stosunku służbowego*, in: Maciejko, W., Szustakiewicz, P. (eds.), *Stosunek służbowy w formacjach mundurowych*, Warszawa 2016, Legalis. Also, compare this with the service relationship of officers of the former communist police – the Civic Militia – see: Zorska, M., *Komentarze do ustaw z 31 stycznia 1950 r. o stosunku służbowym funkcjonariuszów Milicji Obywatelskiej i z 31 stycznia 1959 r. o zaopatrzeniu emerytalnym funkcjonariuszów Milicji Obywatelskiej i ich rodzin*, Warszawa 1960, p. 10. The administrative character of the service relationship is an essential meaning in context of issues included in this paper because only administrative decisions may establish, change content and resolve the service relationship. Suspending a Police officer from official duties has tremendous impact on the content of the service relationship, therefore, application of this institution must also be based on an administrative decision (personal command).

ship.[13] The administrative body (the superior competent in human resource matters) unilaterally and in a sovereign manner shapes the legal situation of an individual. An individual may accept or reject the conditions offered to him or her in their entirety, but he or she does not participate in their construction. This is the domain of the administrative authority. The only element that depends on the individual (the addressee of the administrative decision concerning an appointment) is the will to serve. Pursuant to Art. 28 (1) of the Police Act, a service relationship may be established only on the basis of a voluntary application for service. On the other hand, a written notification of a police officer leaving service requires his or her discharge.[14] The service relationship is fundamentally different in its construction from the employment relationship. What makes them different is not only the lack of equality of the parties to this legal relationship. The characteristics of the service relationship include, first of all, an increased availability of an officer as to the time, place, and type of duties to be performed, an increased degree of subordination to the superior, including the direct superior, the superior in charge of human resource matters, and other superiors, as well as an increased disciplinary and organizational responsibility. This relationship is also characterised by durability, in the sense that service practices provide for enumerative grounds for discharge from service in the Police (obligatory and optional). Therefore, an officer may not be discharged from service if the superior in charge of human resource matters does not apply the appropriate grounds for the officer's discharge or fails to demonstrate the existence of the prerequisites for such discharge.

[13] Liwo, M., op. cit., p. 311; Maciejko, W., Korcz-Maciejko, A., op. cit., p. 20; Korcz-Maciejko, A., *Prawny charakter rozkazu personalnego*, "Administracja. Teoria. Dydaktyka. Praktyka" 2013, No. 3 (32), pp. 138ff; Kacprzak, J., op. cit., p. 97, "It should be noted that the appointment referred to in the above provision [Art. 32 of the Police Act – author's note] is not an 'appointment' within the meaning of the Labour Code. There are fundamental differences between the legal relationships created by appointments under the Labour Code and the Police Act. The essential features of these legal relationships are regulated differently in both separate legal acts, i.e. the Labour Code and the Police Act. The wording of Art. 32 of the Police Act indicates that both the act of appointment and the act of discharge from service are made by way of administrative decisions, which means that a police officer's service relationship is an administrative relationship and thus is not an employment relationship within the meaning of Art. 2 of the Labour Code (judgment of the Provincial Administrative Court in Kielce of 9 March 2007, II SA/Ke 480/06, Legalis No. 433962; and the aforementioned Zieliński, T., *Prawo pracy – zarys systemu*, part I, Warszawa 1986, p. 240; and resolution of the Supreme Court of 5 December 1991, I PZP 60/91, OSNC 1992/7 – 8/123).

[14] Art. 41 (3) of the Police Act.

As indicated above, the nature of the service relationship obliges the police officer to be more available and subordinated in the course of the service. In some cases, however, it is necessary to remove a police officer from his or her duties without delay. This is to be done by way of the procedure of suspension of a police officer from official duties. This procedure is regulated in Art. 39 of the Police Act and in the Regulation of the Minister of Interior and Administration of 17 July 2002 on the procedure of suspension of a police officer from official duties by superiors.[15] The official practice provides for both an obligatory suspension and an optional suspension. The further parts of this paper, however, focuses exclusively on the obligatory suspension from official duties referred to in Art. 39 (1) of the Police Act. It is therefore necessary to indicate the purpose for which the procedure was established and then to analyse the prerequisite that conditions and, at the same time, obliges the superior in charge of human resource matters to issue a personal order to suspend a police officer from his or her duties.

It is also necessary to write that the Polish Legislator established two institutions that have identical names and are regulated through different acts of law. The first is situated in Art. 39 of the Police Act and the second in Art. 276 of the Act of 6 June 1997 – Code of Criminal Procedure.[16] Despite the identical names, these are completely different legal constructions. The latter one can be used as one of the preventive measures if it is necessary to ensure proper conduct of criminal procedure. According to Art. 276 of the Code of Criminal Procedure, as a preventive measure, the accused (as well as suspect) may be suspended in the execution of his official or professional duties or may be ordered to refrain from a certain activity or from driving vehicles of a certain type or prohibited from participating in public procurement procedures for the period of duration of the proceedings. This preventive measure is oriented to achieving a goal that is solely indicated in the aforementioned provision. Therefore, these two legal constructions also do not serve the same purposes, rather, they have mutually independent ones. Thus, the further parts of this paper will not comprise construction based on art. 276 of the Code of Criminal Procedure. Attention will be focused exclusively on the legal construction included in the official practice, i.e. in Art. 39 (1) of the Police Act.

[15] Regulation of the Minister of Interior and Administration of 17 July 2002 on the procedure of suspension of a police officer from official duties by his/her superiors, Dz. U. (Journal of Laws) of 2002, No. 120, item 1029, as amended.

[16] Act of 6 June 1997 – Code of Criminal Procedure, consolidated text: Dz.U. (Journal of Laws) of 2018, item 1987, as amended.

The problems referred to in this paper are significant in the context of the rights and obligations of police officers, because they have direct financial consequences for them. Moreover, they may compel the superior in charge of human resources matters to resolve the service relationship based on Article 41 (2) (9) of the Police Act. For these reasons they should be subjected to further in-depth analysis.

Purpose of suspension from official duties

The purpose of suspension, as has been indicated above, is to temporarily remove a police officer from the performance of his or her official activities. Public service may be conducted only by police officers who constantly meet the requirements set out in Art. 25 (1) of the Police Act. This is because these requirements not only are the condition for the candidates' ability to (start to) serve in the Police, but also enable officers who constantly fulfil them to continue their service. Persons against whom criminal proceedings are conducted raise reasonable doubts as to whether they still enjoy an impeccable opinion. According to the statement of the Supreme Administrative Court included in its judgment of 20 April 2017, I OSK 1084/16[17], "In order to be able to perform his or her duties effectively in the home formation, a Police officer must be free from any suspicions concerning any illegal behaviour. The mere act if charging of a police officer with an intentional crime committed during the performance of his or her duties may raise reasonable doubts as to the behaviour appropriate for a person of impeccable opinion, and thus as to the fulfilment of one of the obligatory conditions that must be demonstrated by any police officer interested in continuing his or her service. The loss of the "impeccable opinion" attribute may also be due to factors other than the criminal record of the person concerned. Such an effect may also result from the specific person being subject to a suspicion or an insinuation."

Suspension of a police officer is, therefore, intended to provide a guarantee that the officer against whom such action is being taken will not be allowed to serve. This thesis also confirms the judicature. As rightly pointed out by the Provincial Administrative Court in Poznań in its judgment of 29 July 2014, II SA/Po 273/14,[18] "suspension from official duties, referred to in Article 39 (1) of the

[17] Legalis No. 1632220.

[18] Legalis No. 1104412.

Act of 6 April 1990 on the Police (consolidated text: Journal of Laws of 2015, item 355), is a procedure whose purpose is to quickly remove a police officer from the current performance of tasks in Police bodies, if it turns out that he or she no longer meets the requirements imposed on a police officers and has adopted a reprehensible attitude towards the applicable law which justifies his or her exclusion from the organisational framework of public service. Thus, presentation to the municipal Police commander of the prosecutor's decision to present specific charges to a police officer is sufficient for the assumption, on the basis of Article 39 (1) of the Police Act, that criminal proceedings have been initiated against this officer." By not performing his or her official duties, the officer will not jeopardize the good name of the Police. Therefore, the purpose of suspension is to protect the image of the Police that this institution needs to have in the eyes of the public. Hence, one should agree with the conclusion expressed by the Provincial Court Administrative Court in Gdańsk, in its judgment of 5 July 2018, III SA/Gd 335/18,[19] in which the court emphasised that "It should be pointed out that the good of the Police, i.e. the purpose of the suspension from official duties, is connected with the obligation to carry out the tasks of the Police by persons who give a guarantee of compliance with the binding legal order and the necessity to ensure a proper perception of the Police by the public," and also with statement of the Provincial Administrative Court in Warsaw included with its judgment of 8 April 2016, II SA/Wa 1507,[20] "It should be emphasized that the introduction of Art. 39 (1) of the Police Act was intended to protect the public interest, which in this case means implementation of Police tasks by persons who guarantee compliance with the legal order and who enjoy positive perception by the public." As a formation that serves the public, it must take care of this image and strengthen confidence in itself. It would be unacceptable if a police officer suspected of committing a criminal offense, qualified as a deliberate offense or a fiscal offense prosecuted by public prosecution, could perform his or her duties, in particular, if those duties were carried out against victims of the same or similar offenses or against persons suspected of committing the same or similar offenses. Suspension from official duties, therefore, protects the interest of the Police itself, which in this case is tantamount to the public interest. Suspension from official duties provides feedback to the public that is supposed to clearly testify to the fact that

[19] Legalis No. 1810427.

[20] Legalis No. 1584363.

only officers enjoying impeccable opinion are in the ranks of the Police and that any emerging justified doubts as to their possession of this characteristic result in their discharge from the service. Only such action can guarantee efficient performance of statutory tasks assigned to the Police. These, in turn, as the doctrine rightly point out, can be efficiently performed only with support of the public.[21] Consequently, the Police must not allow for situations that could put it at risk of losing the trust of the public. This is to be counteracted by the procedure of suspension from official duties, which temporarily excludes an officer's right to perform his or her duties and, consequently, prevents him or her from taking actions ascribed to a public official – official activities which would authorize him or her to represent the state and act on its behalf, including the use of repressive measures against members of the public, i.e. direct coercion measures.[22]

Initiation of criminal proceedings against a police officer as a premise for obligatory suspension from official duties

The content of Art. 39 (1) of the Police Act provides an obligatory basis for suspension of a police officer from his or her official duties. In the situation covered by this regulation, the superior in charge of human resource matters is compelled to suspend an officer from his or her official duties.[23] The decision in this respect is obligatory, which means that it is not at the discretion of that

[21] Opaliński, B., Rogalski, M., Szustakiewicz, P., *Uwagi do art. 39*, in: *Ustawa o Policji. Komentarz*, Warszawa 2015, Legalis.

[22] Compare with "In order to be able to perform his or her official duties effectively, an officer must present himself or herself as a principled, conscientious person, which is a condition for his or her credibility and justifies the powers granted by law to control other persons and interfere with their rights and freedoms" (judgment of the Supreme Administrative Court of 27 July 2018, I OSK 2588/16, Legalis No. 1866932). "(...) police officers are subject to particularly stringent requirements as regards compliance with law and ethical principles and, in order to be able to perform their official duties effectively, they must be free from any suspicion concerning illegal activities or conduct" (as well as judgment of the Provincial Administrative Court in Lublin of 12 December 2017, II SA/Lu 866/17, Legalis No. 1756819).

[23] Compare with "The legislator has left no choice as to the application of Art. 39 (1) of the Act of 6 April 1990 on the Police, consolidated text: Dz.U. (Journal of Laws) of 2007, No. 43, item 277, as amended). This provision must be applied obligatorily in a situation where criminal proceedings have been instituted against a police officer in a case concerning an offense or a fiscal offense that is intentional and prosecuted by public indictment" (judgment of the Provincial Administrative Court in Warsaw of 5 April 2012, II SA/Wa 242/12, Legalis No. 465998, as well as judgment of the Supreme Administrative Court of 13 October 2010, I OSK 589/10, Legalis No. 338198).

superior. It is, therefore, necessary to pay particular attention to the condition for the admissibility of this procedure. As the doctrine[24] indicate, an officer is suspended from his or her official duties if:

– criminal proceedings have been initiated against the officer;
– the criminal proceedings concern an offense or a fiscal offense that is prosecuted on public indictment; and
– the offense was committed intentionally.

There is no doubt that it is the criminal law that determines whether a given act constitutes an offense or a fiscal offense. Art. 1 of the Act of 6 June 1997 – Penal Code[25] and Art. 1 of the Act of 10 September 1999 – Penal Fiscal Code[26] can be used to derive the formal and material definition of an offense[27] and of a fiscal offense,[28] as an act that is punishable by the law in force at the time of its perpetration and is more than negligible, socially harmful, unlawful, and culpable.[29] As a rule, an offense or a fiscal offense may be committed intentionally, unless the Act provides otherwise[30] (Art. 8 of the Penal Code and Art. 4 (1) of the Penal Fiscal Code). It does not matter whether the offense involved direct inten-

[24] Opaliński, B., Rogalski, M., Szustakiewicz, P., op. cit.

[25] Act of 6 June 1997 – Penal Code, consolidated text: Dz. U. (Journal of Laws) of 2019, item 1950, as amended.

[26] Act of 10 September 1999 – Penal Fiscal Code, consolidated text: Dz. U. (Journal of Laws) of 2019, item 1958, as amended.

[27] Górniok, O., Hoc, S., Kalinowski, M., Przyjemski, S.M., Sienkiewicz, Z., Szumski, J., Tyszkiewicz, L., Wąsek, A., *Kodeks karny. Komentarz, Vol. I, art. 1–116*, Gdańsk 2005, p. 12; Marek, A., *Prawo karne. Część ogólna*, Bydgoszcz 1993, p. 89.

[28] Prusak, F., Skowronek, G., *Uwagi do art. 1 – Kodeks karny skarbowy*, in: Bojarski, M. (ed.), *System Prawa Karnego, Vol. 11, Szczególne dziedziny prawa karnego. Prawo karne wojskowe, skarbowe i pozakodeksowe*, Warszawa 2018, Legalis, p. 29. Also, compare this with: Bafia, J., Białobrzeski, J., Czerlunczakiewicz, S., Hochberg, L., Kowalski, J., Kulesza, M., Sosnowski, K., Szpakowski, Z., Śmietanka, I., Wiącek, J., *Ustawa karna skarbowa z komentarzem*, Warszawa 1973, p. 15.

[29] "The Polish Criminal Code does not contain a definition of an offense. However, Art. 1 (1), which specifies who is subject to criminal liability, indirectly indicates certain elements of this definition. An analysis of this provision in connection with Art. 1 (2 and 3), and other provisions of the general part of the Criminal Code that concern criminal liability, leads to the conclusion that, on the background of Polish criminal law, the definition of an offense is the following (...) [as indicated above – author's note]". (Gardocki, L., *Prawo karne*, Warszawa 1999, p. 46). Also, compare this with: Marek, A., op. cit., pp. 88ff.

[30] Górniok, O., Hoc, S., Kalinowski, M., Przyjemski, S.M., Sienkiewicz, Z., Szumski, J., Tyszkiewicz, L., Wąsek, A., op. cit., p. 98; also: Andrejew, I., *Polskie prawo karne w zarysie*, Warszawa 1989, p. 107; Andrejew, I., *Kodeks karny. Krótki komentarz*, Warszawa 1981, pp. 15ff.

tion or conceivable intention (*dolus directus* or *dolus eventualis*). In both cases the offense is considered as intentional. In practice, the supervisor in charge of human resource matters is obliged to obtain information on the legal qualification of the act allegedly committed by a police officer, and on this basis, the supervisor can determine whether the alleged act is an offense or a fiscal offense, as well as whether it was committed intentionally. As the judicature rightly points out, the Police authorities are bound by the formal legal qualification of the act presented by the prosecutor when initiating criminal proceedings[31] against the defendant. They cannot, therefore, make their own assessment in this respect. Consequently, it should be noted that the superior in charge of human resource matters is not competent to verify the charges presented to an officer. These activities are reserved in their entirety to the body conducting the procedure at the pre-trial stage. When obtaining information about the initiation of proceedings against an officer, the supervisor in charge of human resource matters is only obliged to take this fact into account, which must result in suspension of the officer from official duties. Any challenge of procedural decisions or dispute with the assessment of facts and evidence gathered in the course of pre-trial proceedings in a criminal case would be an unauthorised interference of the superior in charge of human resource matters with the competences of bodies conducting the process.

In principle, offenses are prosecuted pursuant to the *ex officio* prosecution procedure,[32] unless the relevant act provides otherwise. This also applies to offenses prosecuted in response to an application. An application submitted by an authorised entity enables the proceedings to be conducted pursuant to the *ex officio* prosecution procedure.[33] The same arguments should be applied to offenses that are prosecuted pursuant the private prosecution procedure but have been the subject of a public complaint under Art. 60 of the Act of 6 June 1997 – Code of Criminal Procedure. If a public prosecutor prosecutes such a crime, he or she changes the procedure from private prosecution to *ex officio* prosecution.[34]

[31] Judgment of the Supreme Administrative Court of 7 July 2016, I OSK 1429/15, Legalis No. 1511316.

[32] "Most offenses are of subject to the ex officio prosecution procedure..." (Gardocki, L., op. cit., p. 58).

[33] Submission of an application is only a condition for initiation of proceedings, which are the same as any other proceedings concerning an offense subject to *ex officio* prosecution (Gardocki, L., op. cit., p. 59); a similar opinion was expressed by Andrejew, I., *Polskie prawo...*, p. 111.

[34] Gardocki, L., op. cit., p. 58.

Thus, the premise obliging the suspension of a police officer from official duties materialises at the moment of initiation of criminal proceedings against the officer, provided, however, that it must be an intentional offense or fiscal offense prosecuted *ex officio*. Moreover, it does not matter if the characteristics of the police officer's alleged act are contained in the Penal Code, the Penal Fiscal Code, or another law containing criminal provisions.

Therefore, from the point of view of the issues discussed herein, it is important to determine the meaning of the term used in Art. 39 (1) of the Police Act, i.e. to indicate the limits of the meaning of the phrase "initiation of criminal proceedings against a Police officer." In the criminal procedure, the phrase is immanently linked to a change in the stage of criminal (pre-trial) proceedings from *in rem* to *ad personam*. Pursuant to Art. 313 (1) of the Code of Criminal Procedure, if the data existing at the time of initiation of an investigation or collected in the course of an investigation sufficiently justifies the suspicion that an act has been committed by a specific person, a decision on presentation of charges is made and is immediately announced to the suspect, and the suspect is questioned. It should be added that the initiation of proceedings against a person does not yet make it possible to establish that a certain person has committed a crime, but the fact that the evidence gathered indicates a high probability of this fact.[35] Such suspicion exists permanently throughout the subsequent proceedings (pre-trial and jurisdiction), conducted *in personam* against a specific suspect and then defendant, until the charges are finally cleared. The indictment

[35] It is worth emphasizing that a comparison of the term "reasonable suspicion of perpetration of an offense" contained in Art. 303 of the Code of Criminal Procedure with the term resulting from Art. 313 (1) of the Code of Criminal Procedure leads to an unquestionable conclusion that in the latter provision a justified suspicion in relation to a specific person means a higher degree of suspicion, both in relation to the fact of perpetration of a crime and in relation to the person of the perpetrator (Brodzisz, Z., *Uwagi do art. 313*, in: Skorupka, J. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2019, Legalis; as well as Resolution of the Supreme Court – Criminal Chamber of 23 February 2006, SNO 3/06, Legalis No. 518682; similarly: Resolution of the Supreme Court – Criminal Chamber of 17 November 2017, SNO 47/17, Legalis No. 1715564, Resolution of the Supreme Court – Criminal Chamber of 18 July 2016, SNO 29/16, Legalis No. 1488748, Resolution of the Supreme Court – Criminal Chamber of 27 May 2015, SNO 11/15, Legalis No. 1263191, Resolution of the Supreme Court – Criminal Chamber of 13 April 2015, SNO 12/15, Legalis No. 1245372, Resolution of the Supreme Court – Criminal Chamber of 9 October 2013, SNO 20/13, Legalis No. 739772, Resolution of the Supreme Court – Criminal Chamber of 7 August 2013, SNO 14/13, Legalis No. 722039, and Resolution of the Supreme Court – Criminal Chamber of 26 April 2010, SNO 17/10, Legalis No. 388932. According to Stanisław Waltoś, there must be a sufficiently high degree of plausibility of the allegation; Waltoś, S., *Proces Karny. Zarys systemu*, Warszawa 1985, p. 208.

only triggers jurisdictional proceedings involving a change of the status of the suspect to a defendant. The end of the pre-trial proceedings, therefore, concludes the stage of gathering of evidence that is analysed and constitutes the basis for the public prosecutor to construct an indictment to be proven before a court. The indictment, thus, only shows that there is still a high probability that the defendant against whom charges have been brought has committed an act with the characteristics of an offense.

According to the doctrine, the procedure of presentation of charges referred to in the Code of Criminal Procedure constitutes a set of activities (consisting in drawing up of a decision to present charges, announcement of charges to the suspect, and questioning of the suspect), which separate proceedings conducted *in rem* from proceedings conducted *ad personam*[36] and which result in the fact that from that moment on, the proceedings are directed against a specific (individually designated) person. One should agree with Arkadiusz Ludwiczek's statement that, in fact, the phrase "directing proceedings against a specific person" is, on the grounds of the criminal procedure, the same as the phrase "instituting proceedings against a person."[37] The procedure of presentation of charges, hence, consists in the execution of a certain sequence of activities, i.e. drawing up of a decision to present charges, announcement of charges, and questioning of the suspect.[38] Consequently, the rule is that the drawing up of the decision concerning presentation of charges is not in itself sufficient to change the stage of the proceedings and must be completed by the other activities, i.e. announcement of

[36] This is because presentation of charges transforms the proceedings from *in rem* into *ad personam*; Korcyl-Wolska, M., in: Światłowski, A.R. (ed.), *Postępowanie karne. Przebieg*, Warszawa 1999, p. 26; a similar opinion is expressed by Brodzisz, Z., op. cit.; Kalinowski, S., *Polski proces karny*, Warszawa 1971, p. 193; Kalinowski, S., *Polski proces karny w zarysie*, Warszawa 1981, p. 270; Kegel, Z., in: Kegel, Z. (ed.), *Polski proces karny. Tom II. Zagadnienia szczegółowe*, Warszawa 1988, p. 26.

[37] Ludwiczek, A., *Wszczęcie postępowania przeciwko osobie jako moment przerwania biegu terminu przedawnienia karalności*, "Iustitia" 2012, No. 2, p. 91.

[38] "Thus, in order to assume that the proceedings have been transformed from the *in rem* into the *in personam* phase, three conditions must be met jointly: the decision to present the charges must be drafted, it must be announced immediately, and the suspect must be questioned, obviously unless the suspect exercises his or her right to refuse to give testimony and when the situations referred to in Art. 313 (1) *in fine* of the Code of Criminal Procedure are not in place" (judgment of the Supreme Court – Criminal Chamber of 24 June 2013, V KK 453/12, Legalis No. 712236); similarly: judgment of the Supreme Court – Criminal Chamber of 5 March 2014, IV KK 341/13, Legalis No. 924802. Also, cf.: Stefański, R.A., *Czynności przedstawienia zarzutów*, "Prokuratura i Prawo" 2013, No. 7–8, pp. 20ff.

the charges and questioning of the suspect. An exception to this rule is a situation where the suspect is in hiding or absent from the country. In such a situation, a change in the stage of the proceedings does not require the last two activities. Of course, the sequence presented herein may be subject to some modifications. As a general rule, the decision to present charges is drawn up in the course of ongoing proceedings, after the order to open an inquiry or investigation has been issued. Presentation of charges is also admissible as early as at the stage of proceedings conducted to the necessary extent (Art. 308 (2) of the Code of Criminal Procedure).[39] At this stage, no decision concerning presentation of charges is drawn up.[40] The content of the charge is included in the record of the questioning of the suspect, and the activity consists in announcing the content of the charge(s) to the suspect and questioning him or her as a suspect. However, this does not in any way affect the change of the stage of the proceedings. It should be emphasized that presentation of charges results in commencement of proceedings against a specific person, regardless of whether the action constitutes an ordinary presentation of charges referred to in Art. 313 (1) of the Code of Criminal Procedure or a simplified presentation of charges referred to in Art. 308 (2) of the Code of Criminal Procedure. In addition, it should be stated, that if charges have already been presented at the stage of the proceedings to the necessary extent, and the form of the proceedings is an investigation, then in accordance with Art. 308 (3) of the Code of Criminal Procedure, the prosecutor, within 5 days from the day of questioning of the suspect pursuant to Art. 308 (2) of the Code of Criminal Procedure, is required to issue a decision concerning presentation of the charges to the suspect.[41] If, on the other hand, the prosecutor refuses to issue such a decision, he or she is required to discontinue the investigation in relation to this suspect.[42] However, the inquiry does not, as a rule, require drawing up of a decision concerning presentation of charges, regardless of whether they have

[39] Also, cf.: Art. 276 of the Act of 19 April 1969 – Penal Code, Dz.U. (Journal of Laws) of 1969, No. 13, item 94, as amended – see: Bednarzak, J., in: Mazur M. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 1976, pp. 375ff; Waltoś, S., op. cit., p. 209.

[40] Stefański, R.A., op. cit., p. 21.

[41] Pursuant to the Penal Code of 1969, the deadline was 3 days. According to the doctrine, this is a follow-up control of the legitimacy of the conduct of this activity by a non-prosecutorial body involved in pre-trial proceedings; Bednarzak, J., in: Mazur, M. (ed.), op. cit., p. 376.

[42] Pursuant to the Penal Code of 1969, in a situation where the prosecutor did not issue a decision to present charges, there was a conclusive discontinuance of the proceedings in relation to the person questioned as a suspect; Waltoś, S., op. cit., p. 209.

been announced at the stage of the proceedings to the extent necessary or after the decision to initiate the inquiry (Art. 325g (1) of the Code of Criminal Procedure). The content of the charge may be included, in the course of the inquiry, in the record of the questioning of the suspect in connection with the commencement of his or her questioning as a suspect.[43] It may, therefore, be in a simplified form. The exception is a situation where the suspect is detained in pre-trial custody. In such a case, the decision concerning presentation of charges is mandatory (Art. 325 (1) of the Code of Criminal Procedure *in fine*).[44]

As the above indicates, the actions related to the presentation of charges referred to in the criminal procedure are a multi-stage procedure that requires a number of consecutive actions. The mere drafting of a decision to present charges is not, in principle, sufficient to consider that there has been a change of the stage in the proceedings from *in rem* to *ad personam*, unless the suspect is hiding or absent from the country. The initiation of the proceedings (the criminal trial) against a person results in the appearance of a party to the proceedings, i.e. a suspect.[45] A suspected person, on the other hand, is not a party. It is not sufficient for the body conducting the process to direct certain activities related to evidence toward a particular person. This does not change the stage of the proceedings.[46] A suspected person, as Kazimierz Marszał points out, is a person who is justifiably suspected of having committed a crime, but who has not yet been presented the relevant charges.[47] By acquiring his or her status as a result of presentation of charges, a suspect acquires

[43] In accordance with Article 325g (2) of the Code of Criminal Procedure, the questioning of a suspect begins by notifying him or her of the content of the charge entered in the report from the questioning. From the start of the questioning, the person is treated as a suspect.

[44] Marszał, K., *Proces karny*, Katowice 1998, p. 349; Waltoś, S., op. cit., pp. 208ff.

[45] A suspect is a passive party in criminal proceedings.

[46] "There is no normative basis, either in the Code of Criminal Procedure of 1969 or in the current Code of Criminal Procedure, for assuming that criminal proceedings against a person are initiated before a decision has been issued to present charges to him or her or before the start, in accordance with the provisions of those procedures, of questioning of him or her as the suspect without issue of such a decision. In particular, the mere taking of evidence aimed at prosecuting a specific person for committing an offense does not have that effect". See: Decision of the Supreme Court – Criminal Chamber of 25 September 2013, I KZP 7/13, Legalis No. 734590.

[47] Marszał, K., op. cit., p. 152. A similar opinion is expressed by: Grzegorczyk, T., Tylman, J., *Polskie postępowanie karne*, Warszawa 2007, p. 324. "A suspected person is someone who only is the subject of a reasonable guess (and not a suspicion) that he or she has committed an offense, in relation to whom no decision has been issued to present charges, and who even has not been questioned as a suspect in connection with being informed of the charges"; Posnow, W., *Uwagi do art. 71*, in: Skorupka, J. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2019, Legalis.

the rights and obligations set out in the criminal procedure, which a suspected person does not have[48] (or has only some of them).

It follows from the above that the phrase "initiation of criminal proceedings against a person" links criminal procedural law to the procedure of presentation of charges. In practice, however, a considerable period of time may elapse between the drafting of the decision to present charges and its announcement and questioning as a suspect, due to various circumstances. Literal interpretation of the above mentioned phrase contained in Art. 39 (1) of the Police Act, by referring its strict scope of meaning to all rules applicable in a criminal process, would oblige the superior in charge of human resource matters to wait for all actions to be performed by the body conducting the criminal proceedings, which would change the stage of such proceedings, as only the performance of a sequence of such actions would make it possible to suspend a police officer from official duties. However, such a position does not withstand criticism. This is because the purpose of suspension, i.e. to immediately stop a police officer's performance of duties, must be borne in mind. Only a police officer that possesses all the characteristics referred to in Art. 25 (1) of the Police Act can guarantee proper performance of his or her official duties and, in a broader sense, of the statutory tasks of the Police. It would be unacceptable if these tasks were to be performed by police officers that raise reasonable concern of loss of impeccable reputation. Any doubts in this respect should be resolved to the benefit of the public interest (the interest of the service). Presentation of charges does indeed initiate proceedings against the relevant person. Consequently, execution of the aforementioned sequence of actions is relevant from the point of view of the criminal process, including the establishment of a point on the timeline when the stage of the proceedings is changed from *in rem* to *ad personam*. The appearance of a party to the proceedings – a suspect – involves the requirement to guarantee his or her rights in the course of the ongoing process. The suspension from duties referred to in Art. 39 (1) of the Police Act does not in any way affect the course of criminal proceedings. It is an instrument that has been set up to protect the interests of the Police, and, in particular, to protect such values as the interests of the service.

Of course, one should bear in mind that this applies only to suspension from official duties pursuant to Art. 39 (1) of the Police Act and not to the preventive

[48] See: Decision of the Supreme Court – Criminal Chamber of 2 July 2003, II KK 268/02, Legalis No. 77406.

measure referred to in Art 276 of the Code of Criminal Procedure.[49] The latter can be used, like other preventive measures, to ensure proper conduct of criminal proceedings. Thus, it is oriented towards achievement of a different goal. As rightly points out by the Supreme Administrative Court in its judgment of 16 October 2009, I OSK 167/09,[50] "It should also be added that the purpose of suspension of a police officer from performance of official duties is undoubtedly to ensure the performance of police tasks by officers enjoying impeccable opinion (cf. Art. 25 (1) of the Act). The preventive measures are applied not for the purpose of ensuring the interests of the specific formation that the defendant is a member of, but rather to address the concern of obstruction of criminal proceedings in an unlawful manner (Art. 258 (1) (2) of the Code of Criminal Procedure) and the concern of perpetration of a new serious offense (Article 258 (2) of the Code of Criminal Procedure)." Thus, despite their identical names, the aforementioned instruments are not mutually competitive and serve mutually independent purposes. Application of the measure provided for in Art. 276 of the Code of Criminal Procedure also does not constitute a positive or negative ground for suspension, by the superior in charge of human resource matters, of a police officer from official duties pursuant to Art. 39 (1) of the Police Act. This position is also confirmed by the judicature. The Supreme Administrative Court indicated that "The rules concerning preventive measures in criminal proceedings may not be applied in any way to the suspension of a police officer from the performance of his or her official duties."[51]

It should also be added that the superior in charge of personal matters generally obtains information about the initiation of proceedings against a police officer from three sources, i.e.:

– from a police officer performing the duty arising from sec. 13 (3) of the Regulation of the Minister of Interior of 14 May 2013 on the specific rights and obligations and the course of service of police officers;[52]

[49] "The basis for suspension of a police officer from official duties may be not only the administrative decision of the relevant superior, provided for in Art. 39 (1 and 2) of the Act of 6 April 1990 on the Police, consolidated text: Dz.U. (Journal of Laws) of 2016, item 1782. The same result is achieved in criminal proceedings by the use by the prosecutor of a preventive measure in the form of suspension from official duties" (judgment of the Supreme Administrative Court of 20 April 2017, I OSK 1084/16, Legalis No. 1632220).

[50] Legalis No. 212027.

[51] Judgment of the Supreme Administrative Court of 16 October 2009, I OSK 167/09.

[52] Regulation of the Minister of Interior of 14 May 2013 on the specific rights and obligations and the course of service of police officers, consolidated text: Dz.U. (Journal of Laws) of 2013, item 644, as amended.

– from a prosecutor performing the duty arising from Art. 21 (2) of the Code of Criminal Procedure;
– on the basis of his or her own information.

In some cases, this information may concern only the draft decision to present charges and not the presentation of charges itself.[53] Since the procedure provided for in Art. 39 (1) of the Police Act is supposed to be capable of protecting such an important value as the interest of the Police, it must be implemented immediately. If the mere drawing up of a decision to present charges did not require suspension of an officer from official duties, it could turn out that the police officer would continue to perform duties covered by the content of the charges[54] (and their content would not be known to the superior in charge of human resource matters), until the time of announcement of these charges to the officer. In such a case, a delay in removal of the police officer from his or her official duties would not only endanger the interest of the Police, but would also inadequately safeguard the course of the ongoing criminal proceedings.

Moreover, in the criminal procedure, a change in the stage of criminal proceedings that is linked to the presentation of charges is not treated in an absolute manner. Cases where the mere drawing up of a decision has the effect of initiation of proceedings against a person are admissible.[55] Hence, a rigorous understand-

[53] Example: a police officer reported to his superior that a prosecutor had summoned him in order to present charges against him, or a prosecutor informed the police officer's superior that a decision had been made to present charges against the police officer and that the police officer did not appear in response to the summons.

[54] Whose detailed content, *nota bene*, would be unknown to the superior because the police officer would notify him about the summons the purpose of presentation of charges, which he would draw up on the basis of the content of the summons received from the body conducting the process, or the prosecutor would inform him only about the very fact that the decision to present the charges has been drawn up, without indicating its content.

[55] "In the conditions of pre-trial proceedings concluded with an application pursuant to Art. 324 (1) of the Code of Criminal Procedure – in view of the obligatory participation of a defence counsel in the case – the very issue of a decision to present charges and its inclusion in the case file – if it is found impossible to announce it to the person suspected of committing an offense under Art. 31 (1) of the Code of Criminal Procedure, fulfils the duties of the body conducting the process arising from Art. 313 (1) of the Code of Criminal Procedure and does not make the procedural effectiveness of further pre-trial and court proceedings dependent on the announcement of a decision to present charges and to question the perpetrator of an offense" (decision of the Supreme Court – Criminal Chamber of 13 June 2012, II KK 302/11, Legalis No. 507112). Thus, it is not only the hiding of the perpetrator or his or her absence from the country that may cause a change in the stage of the criminal proceedings at the time of the drawing up of the decision to present charges. Compare this also with the judgment of the Provincial Administrative Court in Warsaw of 8 April 2016, II SA/Wa 1507/15, Legalis No. 1584363.

ing of the phrase "initiation of proceedings against a person", which *nota bene* also has exceptions laid down in criminal proceedings, could distort the sense of the procedure contained in official practice. Thus, one should agree with the conclusion expressed by the Supreme Administrative Court in its judgment of 10 November 2017, I OSK 70/16,[56] in which the court indicated that:

"One should first of all bear in mind the purpose of this regulation, which is to immediately remove persons suspected of committing the offenses specified in this regulation from their duties. After all, only a person enjoying impeccable opinion can be a police officer (Art. 25(1) of the Act). Without entering at this point into the discourse on the meaning of the word "suspect" on the grounds of the criminal procedure, especially against the background of Art. 71 (1) of the Code of Criminal Procedure, it must be stated that in certain circumstances the term "issue" contained therein may be equated with the term "drawing up" used in Art. 313 (1) of the Code of Criminal Procedure. The Supreme Administrative Court is of the opinion that criminal procedural regulations have a guarantee function, providing the suspect with certain rights in the proceedings. It is not correct to move them *in extenso* to other domains, especially in the present case. In particular, this cannot be approved of due to the different nature of both legal regimes. Therefore, transposition in the process of interpretation of the provisions of the Police Act of regulations applicable to criminal proceedings must take into account the unique characteristics of the service, as well as the purpose of the suspension."[57]

The above is not in agreement with the position contained in the judgment of the Provincial Administrative Court in Warsaw of 27 October 2015, II SA/Wa 358/15,[58] in which the court expressed the belief that:

"Suspension of a police officer from official duties on the basis of Art. 39 (1) of the Act of 6 April 1990 on the Police (consolidated text: Journal of Laws of 2011, No. 287, item 1687, as amended) is possible in the event of initiation of criminal proceedings against the police officer, i.e. the phase of the proceedings

[56] Judgment of the Supreme Administrative Court of 10 November 2017, I OSK 70/16, Legalis No. 1710801.

[57] A similar opinion was expressed in the judgment of the Supreme Administrative Court of 17 July 2018, I OSK 1913/16, Legalis No. 1833570; and in the judgment of the Provincial Administrative Court in Wrocław of 18 January 2018, IV SA/Wr 684/17, Legalis No. 1716693.

[58] Judgment of the Provincial Administrative Court in Warsaw of 27 October 2015, II SA/Wa 358/15, Legalis No. 1364493.

conducted against a person. This phase starts at the time of issue of the decision to present charges, whereby the "issuing" of the decision consists not only in the drawing up of the decision but also in simultaneous announcement of the decision to the person concerned and questioning of that person as a suspect. The mere fact that a prosecutor has issued a decision to present charges cannot be equated with the fact of presentation of the decision to the suspect."[59]

An opinion different from the latter is certainly not evidence of interpretation and application of Art. 39 (1) of the Police Act in isolation from how this issue is defined in the criminal procedure. However, it is not possible to uncritically transfer certain procedures contained in a regulation separate from the official practice without taking into account the purpose for which individual procedures have been established in the practice. This is primarily a matter of safeguarding the interests of the service (the public interest) in situations where a considerable period of time has elapsed between the drafting of the decision to present charges and their announcement. A police officer may deliberately evade appearing in response to summons, only to prevent the charges from being announced to him or her if the authority conducting the process does not order his or her arrest or force him or her to appear for the purpose of this activity (Art. 247 (1) of the Code of Criminal Procedure). Thus, a police officer against whom a decision has been drawn up to present charges that are related strictly to his or her previously performed duties could, at least for some time, continue to perform those duties and thus could perform activities contrary to the interest of the service, as well as activities having a negative impact on the ongoing process, because they hinder the course of the criminal proceedings.

Conclusion

The Police are a formation committed to ensuring public safety and order. The effectiveness of achievement of these tasks depends mainly on the human resources available. It is the officers who are members of this organisation who are responsible for the performance of particular tasks, which in a broader sense are a part of the

[59] A similar opinion was expressed in the judgment of the Provincial Administrative Court in Gdańsk of 5 July 2018, III SA/Gd 335/18, Legalis No. 1810427; the judgment of the Provincial Administrative Court in Białystok of 21 January 2016, II SA/Bk 740/15, Legalis No. 1432094 (this judgment applies to a customs officer); and the judgment of the Provincial Administrative Court in Gdańsk of 2 April 2014, III SA/Gd 60/14, Legalis No. 953297.

tasks that the Police are required to perform. No less important a factor determining the proper performance of tasks by the Police is the need to deepen the public trust in this organization. The Police are an institution created for and serving the public. An important element that fosters this trust is the desire to reassure members of the public that the formation only works through officers of impeccable reputation. The qualities referred to in Art. 25 (1) of the Police Act must, therefore, be examined not only in connection with the acceptance of candidates for service, but also in relation to officers during the period of their ongoing service relationships. It has also become necessary to create certain mechanisms that, if necessary, enable immediate removal of a police officer from performance of his or her official duties in situations where there are reasonable doubts as to whether the officer possesses the specific properties necessary for further service. One of them is the procedure of suspension from official duties. In cases where a police officer is charged in criminal proceedings with an intentional offense or a fiscal offense prosecuted by public indictment, justified doubts arise as to his or her impeccable reputation. Therefore, the legislator has obliged the superior in charge of human resource matters to suspend a police officer from official duties in the event that criminal proceedings are initiated against the officer for an intentional offense or fiscal offense prosecuted by public indictment. The relevant decision is obligatory.

There is no doubt that presentation of charges is a part of criminal proceedings that involves not only drawing up of a decision to present charges, but also announcing the charges and questioning a person as a suspect. As a rule, these activities (in the order set out above) are carried out immediately by the body conducting the process. This applies in particular in situations where the charges have already been presented to a person in the proceedings to the extent necessary. The content of the charges is then entered in the report, they are announced, and the person is questioned as a suspect. Clearly, performance of these actions changes the phase of the proceedings from *in rem* to *ad personam*. However, in some cases, a considerable period of time may elapse between the drafting of the decision to present charges and the performance of the remaining activities. The superior in charge of human resource matters must not, however, take a passive attitude towards an officer in respect of whom he has knowledge of a decision to present charges against him, until completion of all the actions with which the procedural criminal law connects the result in the form of a change of the stage of the proceedings to the stage conducted against a person. This is because it is

necessary to indicate the purpose of the suspension, which is the obligation to immediately remove the police officer from performance of his or her official activities. The instruments provided for in the practice of the service must be suitable for achieving the desired objective. The knowledge among members of the public that a police officer has been allowed to perform official duties only because he or she has not yet been presented charges is certainly not conducive to building the authority and image of the Police as a formation that serves the public. This applies notably to situations where a police officer, as a result of his or her own behaviour, delays the performance of actions related to the announcement of charges against him or her (by not appearing in response to summons issued by the body conducting the process). In such cases, it is necessary to suspend the police officer from official duties as soon as information about the decision to present charges is obtained, without the need to wait for the performance by the body conducting the process of other activities that the criminal procedural law connects with the result in the form of a change in the stage of the criminal proceedings. The change of the stage of the criminal proceedings is of fundamental importance to the passive party to the proceedings appearing in the criminal process – the suspect – because this is when he or she acquires certain rights. With regard to the issue related to the activity of the Police as a formation, the time of the change of the stage of the criminal proceedings is not so crucial. Thus, the constructions provided for in the criminal process must not be transferred uncritically *a limine* to the domain of official practice. The specific nature of the Police, and, therefore, the purpose of the specific structures it must serve must be taken into account. It could turn out that if the superior in charge of human resource matters waits for all the activities related to the change of the stage of the criminal proceedings to be completed by the body conducting the criminal process, this not only would result in a loss of public trust in the Police, but also would cause a significant breach of the proper course of criminal proceedings.

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