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## THE EXPIRATION OF THE SERVICE RELATIONSHIP OF AN OFFICER OF THE PRISON SERVICE IN THE POLISH LEGAL SYSTEM

### USTANIE STOSUNKU SŁUŻBOWEGO FUNKCJONARIUSZA SŁUŻBY WIĘZIENNEJ W SYSTEMIE PRAWA POLSKIEGO

**Summary:** This article's purpose is to present the issue of the expiration of the service relationship of a Prison Service's officer by the power of law. In the given paper, the author analyzes the prerequisites for the expiration of a service relationship.

**Keywords:** Officer, the Prison Service, service relationship, Prison Service's officer, nomination

**Streszczenie:** Celem artykułu jest przedstawienie problematyki wygaśnięcia stosunku służbowego funkcjonariusza Służby Więziennej z mocy prawa. Autorka poddaje w przedmiotowym opracowaniu analizie przesłanki wygaśnięcia stosunku służbowego.

**Słowa kluczowe:** funkcjonariusz, Służba Więzienna, stosunek służbowy, funkcjonariusz Służby Więziennej, mianowanie

## INTRODUCTION

In the Polish law system, officers of the Prison Service perform work as part of administrative employment. They have a non-employment legal relationship with the employer. Its source is a non-employee act of nomination. The construction of

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the employment relationship in the Prison Service is derived from public law, but the work is carried out under voluntary subordination. In practice, a very important issue is how the officer ends his work. The Prison Service Act provides for two modes of termination of service relationship. The first is the discharge from service by prison authorities. The second mode is the expiration of the official's service relationship by law (*ex lege*) of the Prison Service. It is this mode that will be the subject of my considerations in this study.

The essence of the expiration<sup>1</sup> of the service relationship of an officer of the Prison Service consists in his termination as a result of an event with which Article 97 of the Prison Service Act binds such an attitude. These events are, in essence, diverse in nature because sometimes they are related to the behavior of the officer, and in other cases independent of him.

## ANALYSIS OF THE CONDITIONS FOR THE EXPIRY OF THE SERVICE RELATIONSHIP OF AN OFFICER OF THE PRISON SERVICE

In accordance with Article 97 of the Prison Service Act, the service relationship expires if:

- final decision by the medical commission of total incapacity for service;
- a final decision imposing a disciplinary penalty on expulsion from service;
- not completing the preparatory course of the candidate service;
- failure to obtain a positive opinion connected with the candidate service;
- failure to do a university course as part of the candidate service;
- sentencing to imprisonment if the execution of the sentence has not been suspended; a conviction by a final court judgment of an intentional offense prosecuted by public indictment or intentional fiscal offense by public indictment or intentionally committed fiscal offense;
- ruling by a final court judgment of a criminal measure depriving public rights or a criminal measure of the prohibition to practice the profession of a prison officer;
- absence from service for a period of 3 months due to detention on remand;
- renunciation of Polish citizenship;
- leaving the service by an officer;
- death of an officer;
- statement of the missing person;

The catalog of events indicated here is of a taxatic nature. Therefore, its extension to other circumstances not provided for in it is unacceptable. This study will be devoted to the above-mentioned circumstances. They will be presented in order. The final decision

<sup>1</sup> Cf. R. Borek-Buchajczuk, [in:] M. Mazuryk, M. Zoń (ed.), *Służba Więzienna. Komentarz*, Warszawa 2013, p. 255 et seq.

stating incapacity for service may be issued by either – in the first instance – the district medical commission or – in the second – the Central Medical Commission.

The first situation indicated in the Prison Service Act as a result of which the officer's service relationship expires is the final decision by the medical commission of total incapacity for service. These committees operate in the Polish law system on the basis of the Act of 28 November 2014 on medical commissions reporting to the minister competent for internal affairs<sup>2</sup>. Their task is, among others, to assess the health status of Prison Service officers. The final decision stating incapacity for service may be issued by either – in the first instance – the district medical commission or – in the second – the Central Medical Commission<sup>3</sup>. On the day the judgment becomes final, the service relationship of a Prison Service officer expires *ex lege*.

The same legal effect applies to a decision to impose a penalty of expulsion from the service of a prison officer<sup>4</sup>. This is the strictest disciplinary penalty in the system of Polish law. It is imposed for the most severe disciplinary offenses (e.g. violating the dignity of the convict or his personal integrity by the disciplinary superior). Before making a decision on this matter under Article 252 section 9 of the Prison Service Act, the deciding authority is obliged to hear the accused officer. He should be able to disclose the circumstances and motives of his behavior qualified by the disciplinary ombudsman as a serious disciplinary offense.

The decision on expulsion from the service of an officer to result in the expiration of the service relationship must hold a legal binding. In accordance with Article 257 of the Act on the Prison Service, this judgment acquires such an attribute either upon the lapse of the time limit for filing an appeal, if it has not been lodged, or on the day of issuing the decision by the disciplinary appeal body.

The next prerequisites for the expiration of the service relationship relate in the Act of 9 April 2019 only to the candidate service of young officers of the Prison Service. The first is not completing the preparatory course as part of the candidate service. The Act does not specify the reason for not completing it. Therefore, from *the lege non distinguente* argument, I conclude that it is about all causes, including those related to the lack of intellectual or personality predisposition of the candidate. Also, failure to obtain a positive opinion from the superior during the candidate's service results in the expiration of the service relationship. In the legal sphere, a candidate's failure to undertake studies within the service also has such an effect. As a result, it is legitimate to state that any omissions of a training nature at the stage of candidate service result in termination of the service relationship by virtue of law.

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<sup>2</sup> Journal of Laws of 2019, p. 345 and 730.

<sup>3</sup> Article 16-17 Act on medical commissions reporting to the minister competent for internal affairs.

<sup>4</sup> Cf. B. Baran, *Postępowanie dyscyplinarne w sprawach funkcjonariuszy Służby Więziennej*, Warszawa 2016, p. 253 et seq.

The next group of reasons for the termination of the employment relationship of a prison officer are the reasons related to his crime<sup>5</sup>. In accordance with Article 97 paragraph 1 point 3, the service relationship shall expire in the event of a conviction by a final court judgment of imprisonment, if its execution has not been conditionally suspended. From the point of view of this provision, it does not matter whether it is an intentional or unintentional crime. The service relationship expires on the day the judgment of the criminal court becomes final. From a legal point of view, it does not matter whether the officer started serving a prison sentence.

Pursuant to Article 97 (1) (4) of the Prison Service Act, any conviction for an intentional or tax offense results in the expiration of the service relationship. In the case analyzed here, the indifferent significance is what penalty was imposed on the officer. This means that all types of non-custodial penalties can be considered here, including the penalty of restriction of liberty (e.g. unpaid supervised work for public purposes) as well as a fine. Also, the decision to deprive an officer of a criminal court order prohibiting him from practicing his profession results in termination of employment relationship *the ex-lege*. From the point of view of Article 97 (1) (5) of the Act on Prison Service it does not matter for how long he was deprived of public rights or the ban on practicing his profession.

Based on Article 97 (1) (6) of the Prison Service Act, the absence of an officer from work for more than three months due to temporary arrest results in the expiration of the service relationship. In the light of this provision, it is irrelevant at what stage of the criminal trial the detention has been imposed by the court. However, it is important that it lasts continuously for at least three months and one day.

An important issue when applying to an officer of the Prison Service Article 97 (1) (6) of the discussed act is the issue of the starting date of the three-month period. For my part, I am of the opinion that this period starts from the date of detention of an officer of the Prison Service and not from the date on which the criminal court issued a decision on his detention on remand. The textual wording of Article 265 of the Code of Criminal Procedure, according to which the period of detention on remand is counted from the date of detention. It is of no legal significance whether the detention of an officer was carried out by authorities appointed to prosecute crimes (e.g. the Police) or whether it was due to being caught red-handed by other persons (e.g. victims), if the officer was immediately transferred to authorized procedural authorities

The basis for the expiry of the service relationship of an officer of the Prison Service is based on the analyzed Act Article 97 (1) (7) renunciation of Polish citizenship<sup>6</sup>. This effect occurs on the basis of a special declaration of will (request of

<sup>5</sup> Cf. W. Witoszko, *Ochrona trwałości zatrudnienia funkcjonariuszy służb mundurowych i żołnierzy zawodowych*, Białystok 2019, p. 78.

<sup>6</sup> Ibidem, p. 83.

a Prison Service officer) with the consent of the President of the Republic of Poland. The date of expiry of the service relationship is the date of the President's consent, not the date of submission of the application.

In accordance with Article 97 (1) (8) of the Act on Prison Service is also the abandonment of work by an officer. Its manifestation is the unexcused absence of an officer at work lasting over 10 calendar days. Many times the cessation of work by an officer of the Prison Service testifies to his intention to break the legal bond between him and the employer. From the point of view of the theory of law, this is called presumption regarding facts accepted without evidence<sup>7</sup>. This does not mean, however, that this presumption is an unshakable presumption (*preasumptio iuris ac de iure*). It is enough for an officer of the Prison Service without appearing to work for ten calendar days for objectively unjustified reasons to show that he acted without the intention of completely abandoning his job, for example due to the erroneous belief that he had received unpaid leave, or due to the erroneous belief that his service relationship was suspended by penitentiary authorities. The legal effect in the form of the expiration of the service relationship of a Prison Service officer as a result of leaving work arises on the eleventh calendar day from the date of the first day of unjustified absence from work. If this period was interrupted and the officer came to the service at least once, and then interrupted it again without justification, then a ten-day period of unjustified absence from Article 97 (2) of the Prison Service Act is running again.

Performing work in person is a feature of every employment relationship under the Polish legal system. As a result, the death of an officer of the Prison Service always causes his expiry (Article 97 (1) (9) of the Act on Prison Service). The moment of expiration of the service relationship is connected with the day of the death of the officer, and not with its moment. A similar position is represented by the jurisprudence of the Supreme Court in relation to employees<sup>8</sup>. A similar legal effect in the form of the expiry of a service relationship occurs in the event of the disappearance of an officer of the Prison Service (Article 97 (1) (10) of the Act)<sup>9</sup>. This statement in the formal plane takes place as part of judicial recognition as deceased in accordance with Article 29 of the Polish Civil Code.

## SUMMARY

To sum up, I state that in the Polish law system the service relationship of an officer of the Prison Service may expire only within the conditions provided for in Article 97 of the Act on Prison Service. The circumstances not explicitly foreseen in it do not lapse, even functional considerations speak for it (e.g. liquidation of the

<sup>7</sup> Cf. J. Nowacki, *Domniemanie prawne*, Katowice 1976, p. 91.

<sup>8</sup> Cf. judgment of Supreme Court of 10.06.2014, III 123/13 LEX No. 1493924.

<sup>9</sup> Cf. R. Borek-Buchajczuk, *Służba Więzienna...*, p. 257.

penitentiary unit). Article 97 of the Prison Service Act is imperative. It may not be changed by the official authorities or arbitrarily transformed.

The catalog of events resulting in the expiration of an officer's service relationship is special. In this matter, it is unacceptable for the official authorities to use an analogy or even a broader interpretation in accordance with the *exceptiones non sunt excendendae* directive.

In my opinion, this mechanism provided by the law sufficiently protects the interests of Prison Officers. Therefore, it carries out not only the organizational function but also the protective function of employment.

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