RESTORATION TO SERVICE PURSUANT TO ARTICLE 42 OF THE ACT OF 6 APRIL 1990 ON POLICE — SELECTED ISSUES

Introduction

The basis of a police officer’s employment in a police force is an appointment. This is a non-working type of employment. The legal relationship that arises in this case is purely administrative in nature, which means that the source of the service relationship is an administrative decision (personnel order). This act must meet all of the requirements set out in sections 20 and 22 of the Regulation of the Minister of the Interior of 14 May 2013 (hereinafter: the Regulation of 14 May 2013) on the detailed rights, obligations and conduct of the police service, as well as in the rules of administrative procedure. Pursuant to section 19(2)

1 Paweł Gacek, PhD – doctor of legal sciences. He received his degree in 2016 at the Faculty of Law and Administration of the University of Silesia in Katowice. His doctoral dissertation concerned the issue of establishing an official service relationship with a police officer (he has over 30 publications on administrative and police law). Moreover, he is an active police officer in the rank of lieutenant, serving in the National Police Headquarters.

Contact with the author through the editorial office.


4 Dz.U., 2013, item 644 as amended.
of the said regulation\textsuperscript{5}, the provisions of the Act of 14 June 1960 on the Code of Administrative Proceedings (hereinafter: the Code of Administrative Proceedings) shall apply to proceedings in personal matters concerning the appointment, change and termination of an employment relationship to the extent not regulated by the regulation\textsuperscript{6}. Every final administrative decision, including a personal order to establish, change or terminate a service relationship, is subject to a presumption of correctness and legality at the time of its introduction into legal circulation, \textit{i.e.} at the time of its delivery to the addressee, which means that as long as a given decision operates in this circulation, it is the source of the rights and obligations of an individually designated addressee\textsuperscript{7}. This applies in particular to personal orders of discharge from service in the Police, which definitively interrupt the legal relationship between the police officer and the superior in charge of personal matters, on the date specified in this decision as the date of discharge from service. The final decision on the discharge of a police officer from service in the Police not only results in the definitive termination of the existing service relationship, but also deprives the individual of his/her existing legal status as a public officer (police officer).

However, there are cases in which a previously issued decision to discharge a police officer from service will be overturned or cancelled, as a result of the fact that it has qualified defects\textsuperscript{8}. This is the basis for the reinstatement of the dismissed police officer to an equivalent post. The institution of restoring a police officer to service was included in Article 42 (1 – 7) of the Police Act of 6 April 1990\textsuperscript{9}.

In the further part of this study, attention will be focused on issues related to the legal structure contained in Article 42 of the Police Act, including the procedure for reinstatement in service and possible consequences that may occur in relation to a police officer being reinstated.

\textsuperscript{5} § 1(4) of the Regulation of 14 May 2013 defines a personal matter.


\textsuperscript{9} \textit{i.e.} Dz.U, 2020, item 360.
The question of restoration to service is, however, closely linked to a previously issued personnel order for exemption, which, due to different circumstances, may be eliminated from legal circulation. The consequence of the annulment or cancellation of such a decision is reinstatement to the service. Therefore, it seems necessary to precede the issues strictly related to the institution of reinstatement with a discussion of issues related to the discharge of a police officer from police service.

**Legal structure of restoration to service**

**Release of a police officer from service as a condition necessary to apply the institution contained in Article 42 of the Police Act**

What is important in cases of administrative decisions on discharge from service in the Police is that such discharges can only take place in situations indicated in the Police Act. The doctrine and judicature adopt a uniform position that service pragmatics is separate and independent regulations, which fully regulate the status of officers whose employment is based on an official relationship. Therefore, the release of a police officer on a basis other than that indicated in the Police Act results in such a decision being burdened with a qualified defect, and thus the necessity to eliminate it from legal circulation pursuant to Article 156(1)(2) of the Code of Administrative Procedure.

These bases were systematised in the Police Act in two separate groups. The cases listed in Article 41(1) (1 – 7) as well as in Article 41(3) of the Police Act oblige the superior in charge of personal matters to release a police officer from service, while those in Article 41(2) (1 – 9) as well as in Article 38(4) of the Police Act entitle to such release. Each of the aforementioned grounds for discharge is separate and independent, as well as uncompetitive in relation to the others. Their common feature is that a police officer may be dismissed exclusively on one of these grounds, which means the necessity for the superior competent in personal matters to indicate the appropriate legal basis for discharge from service in the Police in a personal order (administrative decision) on discharge, and the necessity to prove that a premise or premises conditioning the application of the appropriate discharge basis on which the administrative decision on discharge from service was based, materialised. Demonstration of the abovementioned reasons included

---


in particular grounds for discharge is the subject of specific administrative proceedings on discharge from service in the Police. They define the boundaries of a specific administrative case within the meaning of Article 1 of the Code of Administrative Procedure, and determine the authority to perform specific actions within the framework of the conducted proceedings, which are aimed at demonstrating (confirming) the existence of premises included in particular grounds allowing or obliging a police officer to be released from service in the Police. Thus, the authority is not entitled to go beyond the established subject matter of the case, as this is determined by the specific grounds for discharge. It may not modify, \textit{i.e.} change or extend, this subject in the course of administrative proceedings. This means that the body initiating proceedings in the case of discharge of a police officer on a specific basis (provided for in Article 41(1) (2) or (3), as well as in Article 38(4) of the Police Act), is not entitled to investigate circumstances which are irrelevant to the subject matter of such proceedings. The essence of the proceedings in the case of discharge from service in the Police, and thus all grounds for discharge, is to determine whether a specific legal fact which is a prerequisite for releasing a police officer on a specific legal basis has materialised.

From the point of view of the possibility to use the structure referred to in Article 42(1) of the Police Act, it does not matter on what basis (obligatory or optional) a police officer was released from service in the Police. As it results directly from the provision referred to above, annulment or invalidation of the decision on discharge from service in the Police due to its defectiveness constitutes the basis for reinstatement to service in an equivalent position. The provision does not contain any exclusions in this respect.

It should also be added that apart from the abovementioned reasons justifying the restoration of a police officer to service, referred to in Article 42(1) of the Police Act, the provisions on the restoration of a police officer to service, contained in Article 42(1–6) of that Act, shall apply accordingly in two cases (Article 42(7) of the Police Act). This applies, first of all, to a police officer discharged from service pursuant to Article 41 (1)(3) of the Act (\textit{i.e.} when a decision imposing a disciplinary penalty of discharge from service was previously issued against him/her): if a final decision referred to in Article 135s (1)(1)(1) of the Police Act has subsequently been issued (\textit{i.e.} a decision imposing a disciplinary penalty of discharge from service), a ruling reversing the previous ruling and stating the acquittal of the penalised person or discontinuing disciplinary proceedings, in disciplinary proceedings which were resumed due to the fact that the criminal proceedings, penal fiscal penal proceedings or in cases of misdemeanours conducted against him/her for the same act, were concluded with a final judgement on acquittal or a ruling on discontinuance of proceedings due to circumstances specified in Article 17(1)(1) or (2) of the Act of 6 June 1997 Code of Penal Procedure\textsuperscript{12}, or in Article 5 (1)(1)(2) of the Act of 24 August 2001 Petty Offences Procedure Code\textsuperscript{13}.

\textsuperscript{12} \textit{i.e.} Dz.U., 2018, item 1987 as amended.
\textsuperscript{13} \textit{i.e.} Dz.U., 2019, item 1120 as amended.
The second case concerns a situation where a police officer is discharged pursuant to Article 41(2)(8) or (9) of the said Act (i.e. committing an act of the constituent elements of an offence or a fiscal offence if the act is obvious and makes it impossible for him/her to remain in service, as well as due to the lapse of 12 months’ suspension from service, if the reasons for the suspension have not ceased to exist), if criminal or fiscal penal proceedings have been concluded with a final acquittal or a ruling on discontinuance of the proceedings due to circumstances specified in Article 17(1)(1) or (2) of the Code of Administrative Procedure.

Thus, in the cases referred to in Article 42(7) of the Police Act, it is not the mere repeal or declaration of invalidity of a decision on discharge from service which results in reinstatement, as is the case in the situations referred to in Article 42(1) of the Police Act. In the situation of discharge pursuant to Article 41(1)(3) of the Police Act, it is the repeal of a final disciplinary ruling imposing the penalty of disciplinary discharge from service, which was the only prerequisite for the issuance of a decision on discharge on that basis. On the other hand, in the case referred to in Article 42(7)(2) of the Police Act, decisions on discharge from service were indicated on the enumerated basis, i.e. Article 41(2)(8) or (9) of the Police Act. Restoration of service takes place if criminal proceedings or criminal fiscal proceedings have been legally ended with the acquittal of the police officer or a ruling on his/her discharge pursuant to Article 17(1)(1) or (2) of the Code of Administrative Procedure. Therefore, it is important that in both situations referred to in Article 41(7)(1)(2) of the Police Act, restoration to service does not take place as a result of eliminating from legal circulation the decision on discharge, but as a result of a decision constituting the basis for issuing a decision on the discharge, or a change in circumstances which justified the application of a specific ground for discharge. Decisions on discharge from service under Article 41(1)(3) of the Police Act, or under Article 41(2)(8) or (9) of the Police Act continue to operate in legal circulation, although they are deprived of legal effect from the moment the police officer is restored to service in the Police.

The restoration to service mode

Article 42(1) of the Police Act provides for the procedure of restoring a police officer to service who has had his/her final decision on dismissal from service revoked, or which has been annulled. As the Warsaw

---

14 According to Article 134f of the Police Act, the penalty of dismissal from service means discharge from service in the Police. However, pursuant to Article 135o(4) of the Police Act, the superior in charge of personal matters, after the ruling becomes final, immediately executes the penalty of discharge from service by issuing a personal order to release the punished police officer from service in the Police.

Administrative Court rightly pointed out in its judgement of 11 October 2017, II SA/Wa 500/17\textsuperscript{16}, “Apart from the standard set out in Article 42(1) of the Police Act, there are no legal provisions regulating the possibility of ‘restoring to service’ or ‘re-entering’ an officer who has been effectively discharged from service”. It should be added here that it must be a final decision annulling a final discharge decision, a final judgement annulling the discharge decision. The judicature correctly points out that “The provision of Article 42(1) and subsequent paragraphs of the Act of 6 April 1990 on the Police (i.e. Dz.U., 2015, item 355 as amended) clearly speaks of a ‘decision’, not a decision of the body of first instance or a decision of the body of second instance. This provision proves that the legislator refers to an administrative decision in the sense of material and formal finality. It cannot therefore be a decision of the body of first instance against which it serves and against which an appeal has been lodged, even if it is immediately enforceable. The application of any of the methods of terminating the appeal proceedings under Article 138 of the Code of Administrative Procedure, consisting in repealing the decision of the body of first instance, does not produce the effects specified in Article 42(1) and subsequent sections of the Police Act, even if the decision of the body of first instance has already been implemented. Enforcement of a decision does not cause a situation of ‘finality’ of the decision”\textsuperscript{17}.

Therefore, what is important for restoring a policeman/policewoman to service is only the mere fact of the functioning in the legal system of a legally valid or final decision, as referred to above. This effect takes place on the date when such a settlement becomes final or legally binding. On the same date, the officer is restored to service by force of law. However, the date on which the verdict becomes final is irrelevant\textsuperscript{18}. As indicated by the Regional Administrative Court in Poznań in the judgement of 13 March 2013, IV SA/Po 1175/12\textsuperscript{19}, “It is only a final judgement that produces legal effects consisting in restoring an officer to service, because only such a judgement revoking a personal order to release an officer from service is binding on the parties to the proceedings and the court that issued such a judgement, as well as other courts and other bodies. Thus, the restoration of an officer to service takes place on the date of the final and binding ruling”\textsuperscript{20}.

\textsuperscript{16} Legalis No. 1694970.
\textsuperscript{17} Wyrok WSA w Warszawie z dnia 6 września 2016, II SA/Wa 579/16, Legalis No. 1514491.
\textsuperscript{18} Wyrok NSA z dnia 4 sierpnia 2017, I OSK 1253/16, Legalis No. 1664020.
\textsuperscript{19} Legalis No. 780407.
\textsuperscript{20} Cf.: Wyrok WSA w Bydgoszczy z dnia 29 lutego 2012, II SA/Bd 1414/11, Legalis No. 867102, wyrok WSA w Lublinie z dnia 6 maja 2010, III SA/Lu 72/10, Legalis No. 264668, wyrok WSA w Warszawie z dnia 18 czerwca 2009, II SA/Wa 214/09, Legalis No. 242400, wyrok NSA z dnia 8 czerwca 2009, I OSK 1102/08, Legalis No. 231578.
As a result of restoration to service, the service relationship previously terminated by the decision to discharge from service, is reactivated. The revocation of the decision to discharge a police officer from service has consequences for the future (ex nunc). Consequently, the annulment of such a decision, which gave rise to reinstatement, makes it necessary to restore the service. It should be noted that the decision on discharge from service, despite its defectiveness, results in termination of the legal relationship between the police officer and the employing authority. Therefore, its revocation does not constitute a decision on the ineffectiveness of the dismissal leading to the reinstatement of the previously existing employment relationship from the date of its termination. Even if such discharge from service is incorrect, it shall result in the termination of that legal relationship. Restoration, on the other hand, is the basis for re-establishment of the relationship. The institution of restoration to service therefore means restoration of employment under the conditions prior to discharge. A police officer shall remain out of service from the date of discharge until the date of his/her return to service. Therefore, it cannot be assumed that an officer who was discharged, then restored to service, has been in service for the entire period of time since the decision to discharge was repealed. The Judicature stresses that “Only a judgement annulling a discharge decision has ex tunc effect.” This position is to be agreed with, but it is necessary to refer only to the decision to discharge and not to the institution of restoration to service. Moreover, the elimination of a discharge decision is not equivalent to the elimination of all of the effects of that decision. Thus, it does not mean that the service relationship, despite the absence of ‘discharge’, has not ended. A different statement would lead to the conclusion that the annulment of the decision could not constitute grounds for restoration to service as referred to in Article 42(1) of the Police Act. If all of the consequences of the discharge decision were to be eliminated, resulting in a return to the state of affairs that existed before it was issued, then it would have to be assumed

21 Wyrok WSA w Łodzi z dnia 13 listopada 2009, III SA/Łd 462/09, Legalis No. 333666.
22 Kuczyński T, Wybrane..., op. cit., p. 264.
24 Wyrok WSA w Szczecinie z dnia 21 września 2011, II SA/Sz 648/11, Legalis No. 385225, and a similar court judgement: wyrok WSA w Szczecinie z dnia 20 kwietnia 2011, II SA/Sz 256/11, Legalis No. 377371.
26 Wyrok WSA w Bydgoszczy z dnia 3 września 2014, II SA/Bd 704/14 Legalis No. 1116870.
that the police officer continued and continues to perform his/her service. A police officer who remains in service could therefore not be restored to service. The structure contained in Article 42(1) of the Police Act applies only to police officers with whom this relationship has been previously terminated.

The same effect takes place in the cases specified in Article 42(7)(1)(2) of the Police Act. However, it must be a final decision referred to in Article 42(7)(1) of this Act or a final decision to discontinue criminal or penal-fiscal proceedings or a final judgement on acquittal for the reasons referred to in Article 42(7)(2) of this Act.

Restoration to service in the situations indicated in Article 42(1)(7) of the Police Act takes place ipso jure, and does not require any activity on the part of the restored police officer and the superior in charge of personal matters. The reactivation of the service relationship may also occur without the knowledge and will of the person concerned. The provisions of official pragmatics do not introduce any conditions which the restoration to service would be dependent on. In particular, they do not require the issue of a personnel order (administrative decision) on restoration to service. It should be noted, however, that restoration to service does not constitute permission to serve.

Therefore, it is not possible to agree with the position expressed in the doctrine which states that “An officer referred to in Article 42(1)(7) of the Police Act is not automatically reinstated in service,” and that “(...) the annulment or cancellation of the decision to discharge from police service on the grounds of its defect constitutes grounds for restoring the officer to an equivalent post. This means that the police officer is not automatically restored to service.” Return to service takes place automatically, as soon as the prerequisites indicated in the provisions of Article 42(1)(7) of the Police Act have appeared, however, return to service is not a concept identical to allowing to enter service. The view of the NSA (Supreme Administrative Court) expressed in the judgement of 24 July 2013, I OSK 1968/12 should be shared, which indicates that “A police officer is restored to service by virtue of law, with the date of validity of the judgement revoking the decision on discharge from service”, as well as the one

---

28 Wyrok WSA w Poznaniu z dnia 13 marca 2013, IV SA/Po 1175/12.
30 Ibid., wyrok NSA z dnia 18 lutego 2016, I OSK 2932/14, Legalis No. 1509995.
34 Legalis No. 764627.
indicating that “The analysis of the content of Article 42 of the Police Act indicates that the legislator differentiates between the issues of restoration to service in the Police, notification of readiness to take up service, admission to service and commencing service, combining with them various legal consequences.”\(^{35}\). There is therefore no doubt, as the Supreme Administrative Court also pointed out in its judgement of 19 January 2018, I OSK 2040/17\(^{36}\), that Article 42 of the Police Act differentiates the aforementioned concepts and combines with them certain (albeit different) legal consequences.

Return to service, which occurs *ipso jure* when the condition for the use of this institution has become a fact, is not definitive (unlimited in time). In order to be of such a character, the reactivated service relationship requires from the officer restored to service first of all the fulfilment of the condition set forth in Article 42(2) of the Police Act. This is not the only condition, but it is only the fulfilment of this condition that makes it possible to examine whether a police officer may be admitted to service at all. Therefore, it is only when a restored police officer declares his/her readiness to take up service immediately that it is possible to determine whether an obstacle referred to in Article 42(3) of the Act has occurred.

**The consequences of restoration to service**

**Notification of readiness for immediate start of service**

According to the provision of Article 42(2) of the Police Act, a discharged police officer, within 7 days of being restored to service, should report his/her readiness to take up duty immediately\(^{37}\). Otherwise, the service relationship must be terminated pursuant to Article 41(3) of the Police Act\(^{38}\). It should be added that the obligation to meet this deadline is only imposed on the police officer being restored to service\(^{39}\), which results in the fact that he/she is not informed by his/her superior about the date on which the decision which is the basis for his/her restoration to service in the Police became legally binding or final, which is, as it should be emphasised, a point on the time axis from which the 7-day

\(^{35}\) Wyrok NSA z dnia 3 lutego 2017, I OSK 1495/15, Legalis No. 1578651.

\(^{36}\) Legalis No. 1741119.

\(^{37}\) W. Kotowski points out that a police officer who has been restored to service should report his/her readiness to take up his/her duties within 7 days (Kotowski W, Ustawa o Policji. Komentarz. Warsaw, 2008, p. 442).

\(^{38}\) See more: Gacek P, Zwolnienie ze służby w Policji w związku ze złożonym przez policjanta pisemnym zgłoszeniem o wystąpieniu z niej na podstawie art. 41 ust. 3 ustawy z dnia 6 kwietnia 1990 r. o Policji. Przegląd Policyjny, 2018, No. 2 (130), p. 63ff.

\(^{39}\) Wyrok NSA z dnia 10 czerwca 2014, I OSK 1409/13, Legalis No. 1043014.
deadline for reporting readiness to take up service is calculated\textsuperscript{40}. This deadline is of a material nature\textsuperscript{41}, therefore, if a police officer fails to report his/her readiness to take up service, it is necessary to discharge him/her from service in the Police pursuant to Article 41(3) of the Police Act. The same effect also occurs if a police officer declares such readiness, but before the beginning of this period (\textit{e.g.} after the relevant decision has been issued, but before it becomes final), or after the expiry of the period indicated in Article 42(2) of this Act. This deadline cannot be extended by way of a legal action, and there are no grounds for its restoration in the event of its violation\textsuperscript{42}.

Moreover, one should also remember about the proper application of Article 42(1 – 6) of the Police Act to the ruling referred to in Article 42(7)(1) of the Police Act. Pursuant to Article 135s(5) of the Police Act, a decision (ruling) referred to in Article 135s(1) of the Police Act may be appealed against (complaint) to a senior disciplinary superior within 7 days from the date of service, and a decision (ruling) issued by the National Police Chief may be appealed against only within the same time limit. The ruling issued in the first instance shall become final after the lapse of the time limit for appealing against it, and the course of this time limit shall depend on the delivery of the ruling. A decision of the second instance, however, shall become final upon its issuance by the appellate body, pursuant to Article 135o(1)(2) of the Police Act.

The requirement to report a police officer’s readiness to take up service immediately results from the fact that service in the Police is voluntary (Article 28(1) of the Police Act). Therefore, since the reactivation of the service relationship took place by virtue of the law, the superior in charge of personal matters is obliged to examine whether the restored police officer is ready to take up service voluntarily (continue to do so). A lack of activity on the part of a police officer (not declaring such readiness), within the time limit set forth in Article 42(2) of the aforementioned Act, or the submission of a declaration of failure to declare readiness to take up service immediately, results in the recognition that it is not the officer’s will to perform service in the Police. The same applies in the event


\textsuperscript{41} Wyrok NSA z dnia 24 lipca 2013, I OSK 1968/12, Legalis No. 764627, and a similar court judgement: wyrok WSA w Krakowie z dnia 8 marca 2012, III SA/Kr 752/11, Legalis No. 866156, also Czebotar Ł, Gądzik Z, Łyżwa A, Michałek A, Świerczewska-Gąsiorowska A, Tokarski M, Komentarz..., \textit{op.cit.}, p. 435.

\textsuperscript{42} Wyrok NSA z dnia 24 lipca 2013, I OSK 1968/12.
of such a declaration before the beginning of the period of time or after the lapse of this period. The superior in charge of personal matters may not take such a declaration into consideration, as it is ineffective, i.e. it may not bring about any legal effects. Thus, in a situation where a police officer does not report such readiness, or reports it after 7 days from the date of his/her return to service, he/she must obligatorily be released from service in the Police pursuant to Article 41(3) of this Act, and the decision, in this respect, is binding.

The declaration of will of the restored police officer must be unconditional. It may not be reserved by any condition or deadline. This is due to the administrative nature of this relationship, in which the administrative authority determines the conditions of service in a sovereign and unilateral manner. A police officer, as a rule, has influence only on the question of establishing and terminating the service relationship, but has no influence on the shape of the legal relationship established or reactivated. In the event of restoration to service, the provision of Article 42(1) of the Police Act shows beyond any doubt that restoration to service should take place in a position equivalent to that held by the police officer before his/her discharge from service in the Police. However, appointment to a specific official position does not take place automatically, but after the police officer declares his/her readiness to take up the position immediately within the time limit indicated in Article 42(2) of the Police Act, as well as after verifying whether in the period after his/her discharge there were no circumstances which would permanently prevent the police officer from performing further service (i.e. whether one of the attributes which determine the possibility of performing the service has not been lost). Therefore, the police officer remains unassigned until the condition set out in Article 42(2) of the Police Act is met and it is determined that he/she may be admitted to it. If the police officer does not meet the condition set out in Article 42(2) of the Police Act, he/she is released from service with the Police on the basis of Article 41(3) of the Police Act, and the police officer is not appointed to a specific official position before that release.

The notification of readiness to take up service immediately, apart from those mentioned above, was not burdened with any additional requirements. The legislator has not precisely defined the formal requirements, the fulfilment of which would condition the effectiveness of such a declaration. Therefore, it may be submitted in any form, i.e., orally, in writing, by means of distance communication (e.g. telephone, fax, telegraph), as well as by means of electronic communication. One should agree with the position expressed in the judgement of the Warsaw Administrative Court of 12 December 2011, II SA/Wa 1324/11\(^{44}\) that “A sufficient way of stating a police officer’s will to return to service is to present

---


\(^{44}\) Legalis No. 411698.
it orally to his/her superiors. A policeman/woman, who has been acquitted by a final judgement of a criminal court, is not obliged to express his/her willingness to return to service in writing”. Such a conclusion is directly derived from Article 42(2) of the Police Act. A comparison of the term “declaration of readiness to take up service immediately” used there with that contained in Article 41(3) of the Police Act entitles the legislator to state that only in the latter case did the legislator specify the acceptable form of such declaration. Article 41(3) of the Police Act explicitly states that a police officer shall be discharged from service within three months of the date of his/her “written notification of his/her resignation”. Assuming that the legislature is rational, if it wanted to limit the form of notification of readiness to take up service immediately to the written form only, this would be expressed expressis verbis in the content of the editorial unit of Article 42(2) of the Police Act. The lack of precise indications in this respect entitles the legislator to state that the intention of the legislator was to simplify as much as possible the form in which the restored police officer is to submit his/her statement, and thus to facilitate his/her return to service.

**Termination of the service relationship with a police officer who has not fulfilled the condition set out in Article 42(2) of the Police Act**

Termination of the service relationship with a police officer restored to service who has not reported his/her readiness to take up the service immediately should take place immediately, not later than on the date indicated in Article 41(3) of the Police Act, and the date is counted after the 7-day period indicated in Article 42(2) of this Act. The position of the Supreme Administrative Court is contained in the judgement of 16 February 2009, I OSK 370/08\(^{45}\), in which the court states that “The seven-day period, outlined in Article 42(2) of the Police Act, for a police officer to report his/her readiness to take up service immediately begins on the date on which the judgement reactivating the service relationship becomes final, and the three-month period, which the legislator set for the authority to issue a decision on dismissal from service, begins after the deadline set for the police officer to submit an application for readiness to take up service”.

Failure to meet this deadline does not, however, release the authority from this obligation. A service relationship cannot exist without the consent of the officer concerned. Voluntary service is a fundamental principle which is the basis for such relations (Article 28(1) of the Police Act). The officer’s consent, as in the case of a voluntary application of a candidate for service, confirmed by the acceptance of the act of nomination, is a *sine qua non* condition not only for the establishment, but also for the continuation of the service relationship. The position of the doctrine which states that “since that act [the act of nomination of a candidate to establish the

\(^{45}\) See: footnote 39.
service relationship – author] must, however, be preceded by the candidate’s voluntary application for service and then supported by the performance of his/her service, the candidate’s will is deemed to constitute, on a par with the will of the appointing authority, a premise for the establishment of the service relationship” should be accepted

The same applies in the case of restoration to service which occurs as a result of a specific law-making fact which brings about that restoration to service. The only difference in the case of restoration to service is that the declaration of readiness to take up service immediately – or in other, words the declaration of readiness to perform further service – is a follow-up action in relation to restoring the service relationship. The restoration of service must be preceded by the candidate’s voluntary application and the acceptance of the nomination act. Therefore, in principle, the relationship is established ex post, i.e. after the individual has made a declaration of intent to voluntarily join the service (willingness to do so). Therefore, restoration to service is conditional in nature, as it requires verification of the will of the individual to continue the service relationship reactivated by law. In turn, the discharge from service under Article 41(3) of the Police Act, if the restored police officer’s willingness to continue to perform service is not available, is aimed at securing his/her rights. It is therefore carried out in the interest of a party, so that his/her legal situation is clearly established by a decision having the character of a qualified administrative act, which will determine his/her legal status. Therefore, even a delay resulting from a failure to comply with the time limit laid down in Article 41(3) of the abovementioned Act does not preclude the adoption of a decision on discharge from service, since that decision is of a binding nature

The authority is obliged to issue it, even if it has previously been left inactive. This does not release it from the obligation referred to in Article 42(2) of the Police Act.

Therefore, the position presented by the Supreme Administrative Court in the judgement of 16 February 2009, I OSK 370/08, in which it states that “The three-month deadline set by Article 41(3) of the Police Act sets the time limit for the authority to proceed in the matter of issuing a decision on discharge from service and shaping the rights and obligations of the police officer at that time. The assumption that a decision to discharge a police officer from service may be made at any time if the police officer failed to submit a declaration of readiness to take up service would be in conflict with the above objectives and with the content of a provision of a guarantee standard. Therefore, the three-month deadline set by Article 41(3) of the Police Act is a procedural deadline of a substantive legal nature. It limits to three months the possibility for an authority to perform an action (issue a decision on discharge),

---


48 See: footnote 39.
which concerns the sphere of substantive law – it shapes the rights and obligations resulting from a service relationship. It should also be noted that, contrary to the appellant’s claims, the Court of first instance did not state that the three-month period for the issuance of a decision is of a material or procedural nature, but rather considered that the exceeding of that period was significant and therefore the contested decision was issued in violation of Article 41(3) of the aforementioned Act. The position of the Court of first instance is correct, because a decision issued in violation of a legal provision, in this case Article 41(3) of the Police Act, cannot remain in legal circulation, and the Court of first instance reviewing the legality of the appealed decision could not accept the decision, which was issued in violation of a legal norm”. Therefore, in the opinion of the Supreme Administrative Court, the expiry of the three-month deadline set by Article 41(3) of the Police Act makes it impossible to take a decision on discharging a police officer from service, as this would violate the said provision to the extent that it would have to be eliminated from legal circulation.

Without prejudice to the guarantee character of this deadline, in the aspect indicated by the court, which is intended to prevent an authority from postponing the final determination of an officer’s legal status, it should be borne in mind that even dismissal after this deadline will satisfy a request from a party who, as a result of his/her inactivity, does not wish to remain in the service relationship which, nota bene, has been restored without his/her consent or knowledge. A much greater value to be protected should be the willingness of the restored officer to perform his/her duties than the guarantee of his/her timely release from those duties when he/she is unwilling to perform them for any reason. If, on the other hand, the expiry of the time limit specified in Article 41(3) of the Police Act would result in the impossibility of releasing the reinstated police officer from service who did not notify their readiness to take up service immediately within 7 days, the procedure specified in Article 42(2) of the Police Act would be excluded. It should also be added that it would be impossible to apply the regulation set out in Article 42(3) of the Police Act, because it can only be implemented on the condition that the police officer who has been restored to service reports his/her readiness to take it up immediately. Therefore, it cannot be applied in a situation where the deadline specified in Article 42(2) of the Police Act has expired unsuccessfully. It is also important that the regulation contained in Article 42 of the Police Act is a special regulation defining in a comprehensive manner the mode of conduct with a police officer who has been restored to service, including in particular the manner of the termination of the service relationship with him/her in a situation where, after his/her return to service, he/she has not notified his/her readiness to undertake it immediately (Article 42(2) of the Police Act), as well as in a situation where, despite such notification, other circumstances have been revealed which make it impossible to allow him/her to perform that service (Article 42(3) of the Police Act).
Preventing the discharge of a police officer restored to service under Article 41(3) of the Police Act who has not fulfilled the condition set out in Article 42(2) of the Police Act, for the sole reason that an administrative authority has failed to fulfil its obligation, would result in that police officer not being discharged on another basis. Such discharge, *i.e.* on the basis other than Article 41(3) of the Police Act, is permissible on the principles set out in Article 42(2) of the Police Act. Thus, a different legal structure not provided for in Article 42 of the Police Act should be applied, as it is necessary to release a police officer who does not consent to the continuation of the service relationship. The rhetorical question is what would be the basis for discharging a police officer from service who has not fulfilled the condition set out in Article 42(2) of the Police Act and has not been discharged within the time limit indicated in Article 41(3) of the Police Act, and in what manner.

The Supreme Administrative Court rightly notes that the nature of a term, *i.e.* whether it is of a material or legal nature, is determined by the content of the provision which it designates, as well as the resulting function which the provision is to perform and its essence. The essence of the provision of Article 42(2) of the Police Act is the establishment of a regulation enabling the discharge of those police officers who have been restored to service and who do not express readiness to perform service. This is also the purpose and function of the introduced exemption basis indicated in Article 42(2) of the Police Act. Therefore, a delay of the authority cannot deprive an individual of his/her right to determine his/her legal status.

The question should also be asked whether Article 42(2) of the Police Act obliges the basis for discharge indicated in that provision to be applied, or whether it orders the discharge of a police officer under that procedure. As has already been shown, the application of Article 41(3) of the Police Act to the situation indicated in Article 42(2) of the Police Act makes it impossible to apply the provision mentioned as the first one in full, as the key element, which is the written notification of leaving the service in the Police, is missing in this case. The substitute of a written notification of leaving the service is the lack of activity on the part of a police officer. The legislator cannot impose an obligation on an individual if he/she is not interested in continuing a service relationship that has been restored without his/her knowledge and will. In fact, therefore, a certain legal fiction has been adopted, which orders that the passive attitude of such a person be treated as if it were a declaration of unwillingness to continue service. It would therefore be appropriate to consider whether the aim of the legislator was not to indicate the grounds for his/her discharge to be applied in the case of the release of a police officer who has been restored to service in circumstances in which he/she did not declare his/her readiness to do so immediately, rather than to specify the procedure for his/her release in the event that the premise indicated in Article 42(2) of the Police Act becomes a fact.
In conclusion to what has been said above, it must be stated that although restoration to service is by law, it requires confirmation by the police officer of his/her willingness to continue to do so and within the statutory period. The consequence of the absence of such a statement is the obligation to release him/her from service after the deadline indicated in Article 42(2) of the Police Act, pursuant to Article 41(3) of the Police Act. A correctly submitted declaration of readiness to take up service immediately by a police officer restored to that service makes it possible to further examine whether he/she may actually be admitted to perform service. Therefore, it is not possible to continue the service relationship if there is no information on the actual will of the natural person whose status of an officer has been restored. It also requires that it should be pointed out that, in the event of failure to meet the condition provided for in Article 42(2) of the Police Act, the discharge from service in the Police requires adaptation of that discharge procedure to the legal situation in which the police officer finds himself/herself after his/her return to service. There can be no question here of full automatism and the direct application of all of the requirements covered by the provision establishing the procedure for exemption from service under Article 41(3) of the Police Act. An exemption on this basis, as a rule, must be preceded by a written notification of the officer’s dismissal from service. Only such a police officer’s request obliges the superior in charge of personal matters to release him/her within 3 months of the submission of such a request. In the event referred to in Article 42(2) of the Police Act, a written report on leaving service replaces the failure to report the readiness of the restored officer to take up service immediately within the time limit set forth in Article 42(2) of the Police Act. Therefore, a person’s willingness to continue service is based not on an explicit declaration of will, but on the consequences that the law attaches to the passive attitude of the officer restored to service. The same declaration of lack of readiness to take up service immediately within the time limit specified in Article 42(2) of the Police Act results in the necessity to release the police officer restored to service under Article 41(3) of the Police Act.

**Verification of the qualities of a police officer who has been restored to service, in terms of his/her eligibility for service**

A declaration of readiness to take up service submitted on time by the restored police officer shall entitle the superior in charge of personal matters to examine whether there are any circumstances preventing the police officer from taking up service. Pursuant to Article 42(3) of the Police Act, if after being restored to service, it turns out that, despite the notification of readiness to take up service immediately, a police officer cannot be admitted to service because, after their release, circumstances occurred which made it impossible for them to perform their service, the service relationship is terminated pursuant to Article 41(2)(5) of the Police Act.
Act\textsuperscript{49}, unless there are other reasons for his/her release. What is important in this case is that the superior in charge of personal matters is entitled to perform the activities referred to in Article 42(3) of the said Act only in the situation where the restored police officer has previously submitted a written notification to take up service immediately, \textit{i.e.} one which is legally effective. If a police officer fails to fulfil this condition, the superior in charge of personal matters is obliged to release him/her on the legal basis indicated in Article 42(2) of the Police Act, without the need to examine whether that officer may be admitted to service.

If, after being restored to service in the Police, it is found that a police officer who has declared his/her readiness to take up service immediately cannot be admitted to service because, after his/her release from service, circumstances occurred which made him/her unable to perform the service, the superior in charge of personal matters is obliged to release him/her on the basis of Article 41(2)(5) of the Police Act\textsuperscript{50}, unless there are other reasons for release. In principle, therefore, a finding that a particular obstacle has occurred results in the obligation to discharge a police officer who has been restored to service due to the important interest of the service. However, in a situation where another circumstance being the basis for obligatory or optional discharge from service has been revealed, discharge should take place on that basis.

It also seems justified to state that if a police officer has submitted a declaration of readiness to take up service immediately, in the manner specified in Article 42(2) of the Police Act, and there are no circumstances showing that he/she cannot be admitted to service, because after his/her release there were no circumstances causing him/her to be unable to do so, but he/she later revoked that declaration, then he/she should be discharged from service pursuant to Article 41(3) of the Police Act. A statement on the cancellation of a declaration of readiness to take up service immediately should be treated as a written declaration on leaving service, which results in an obligation to be discharged on that basis. When interpreting the content of such a statement, it should be borne in mind, first of all, what the police officer’s intention is, and it results from this that he/she does not want to continue his/her service. Therefore, in such a situation, cancellation of a declaration of readiness to take up service immediately, which would be the same as the declaration


\textsuperscript{50} Czebotar Ł, Gądzik Z, Łyżwa A, Michalek A, Świerczewska-Gasiorowska A, Tokarski M, Komentarz..., \textit{op. cit.}, p. 436 – such circumstances are indicated there, for example.
referred to in Article 41(3) of the Police Act, would be subject to requirements as to its form, such as the declaration of leaving service with the Police.

The fulfilment of the conditions referred to in Article 42(2) and (3) of the Police Act, if there are no specific obstacles, shall enable the restored police officer to be admitted to service. Thus, he/she may be appointed to a specific official position, i.e. an equivalent position, and may continue to perform his/her duties. A nomination to an equivalent post does not mean that a police officer must be appointed to the same post as he/she held before he/she was discharged from police service. The point is that he/she should be appointed to a post equivalent to that which he/she held before his/her discharge from police service.

As a result of these conditions, restoration to service is no longer conditional and limited in time, provided that the restored police officer is permanently willing to continue his/her service.

**Financial benefit for the period of staying away from service**

The reactivation of the service relationship results in its re-establishment by law. The consequence of this is, among other things, the acquisition by the restored police officer of the right to a financial benefit for the period of staying out of service. This institution has been included in Article 42(5) of the Police Act. It follows from that provision that a police officer reinstated in service is entitled to a financial benefit for the period of time spent away from service equal to the salary of the position held before his/her discharge, but not more than for 6 months and not less than for 1 month. The same benefit shall be granted to the person referred to in Article 42(3) of the Police Act.

What is important is that this law materialises *ipso jure* when a police officer is restored to service. This is evidenced by the part of the provision which states that a police officer ‘is entitled’ to this benefit rather than ‘he/she may be granted such a benefit’. It is also irrelevant whether the service relationship that has been restored is temporary or permanent. The legislator has not made the granting of that benefit conditional on the restoration of the police officer meeting any additional criteria or conditions. In particular, he/she is not obliged to apply for it. The right referred to in Article 42(5) of the Police Act materialises only as a result of the mere fact of being restored to service.

The correlate of a law enforcement officer is the duty of his/her superior in charge of personal matters. As the police officer is entitled to this benefit in connection with his/her restoration to service, it should

---


be concluded that it must be granted immediately, as it is due from that moment on. The superior mentioned above is therefore obliged to issue a decision in this respect immediately after obtaining and verifying information about the fact of legally effective reinstatement of a police officer to service.

The granting a financial benefit to a police officer for the period of time spent away from service shall take the form of a qualified administrative act, i.e. an administrative decision. The decision of the administrative authority is related in this respect. As the Regional Administrative Court in Lublin rightly emphasises in its judgement of 22 December 2011, III SA/Lu 355/1153, “(...) each time a police officer is restored to service, the authority is obliged to grant a financial benefit for the period of time spent away from service”54.

The administrative decision to grant a financial benefit is called a personnel order. However, the name of the decision itself is not so important. The essence is that it must be a qualified administrative act. It must be clear from the background to this decision that the authority is granting or refusing to grant a financial benefit to a police officer who has been restored to service for the duration of his/her absence from service. The decision only decides on the abovementioned issue (i.e. granting or refusing to grant this benefit) and defines its amount as a cash benefit equal to the salary of the policeman/woman in his/her position prior to his/her dismissal from service in the Police within the limits of one to six months. It does not indicate the amount of the benefit granted. The indication of the amount of the benefit granted in the decision should be regarded as a defect of this decision. It would be necessary to verify whether the amount indicated in the document is within the limits specified in Article 42(5) of the Police Act. It is unacceptable to grant this benefit in an amount which would be lower than the salary for one month or higher than the salary for six months. A decision containing such a decision would be burdened with a qualified defect, which would determine its elimination from legal circulation, pursuant to Article 156(1)(2) of the Code of Administrative Procedure.

As already mentioned, the provision of Article 42(5) of the Police Act introduces the obligation for a financial benefit to be granted each time for the period of staying out of service. As the jurisprudence rightly points out, “Such a construction of the provision indicates that the legislator guarantees only the police officer’s right to the benefit, while the amount of the benefit is left to the discretion of the administrative body, limiting it to a minimum and a maximum”55.

53 Legalis No. 439943.
55 Wyrok WSA w Warszawie z dnia 7 czerwca 2011, II SA/Wa 392/11, Legalis No. 342851, also: wyrok WSA w Warszawie z dnia 29 listopada 2007, II SA/Wa 1611/07, Legalis No. 292963.
This benefit is of a compensatory nature and constitutes some form of compensation for the unlawful termination of the service relationship. The criterion for determining the amount of the financial benefit granted should therefore be the circumstances of the financial situation of the person discharged between the date of his/her discharge and the date of his/her return to service. The authority must therefore determine what consequences in terms of the police officer’s assets have been caused by his/her discharge from service. He/she should therefore take into account the benefits that a police officer has received in connection with his/her discharge from police service, in particular, the severance pay, the equivalent of unused holiday leave, as well as the time spent doing overtime. The assessment of the social and living situation of an officer discharged from service in the Police should cover the period from the date of discharge from service in the Police until the date of their return to the Police. It is also necessary to take into account whether, during that period, the officer was unemployed with or without the right to a welfare. However, the sheer length of time spent away from work is not crucial to this assessment.

It should also be stressed, as has already been said, that the amount of the financial benefit is to compensate the police officer for unjustified discharge from police service. However, not every discharge must ipso facto result in a worsening of the financial situation of the released police officer. The benefits he/she received in connection with that discharge, as well as the activity he/she undertook, may result in financial benefits which will exceed those he/she received while being an active officer (i.e. salary and other benefits related to service).

However, no account can be taken of those regulations that were voluntarily made by an exempt police officer and that were not indispensable.

---


57 Wyrok WSA w Warszawie z dnia 16 października 2017, II SA/Wa 303/17, Legalis No. 1691823.


in particular, those whose purpose was not to protect life, health, the person disposing of property, or property from greater losses, and whose implementation resulted in negative consequences for his/her assets, i.e. the deterioration of his/her financial situation. The role of the authority is not to assess the free management of property by a police officer, including the financial resources he/she possesses, or the risks involved. This does not remain the responsibility of the administrative authority. This assessment should be objective and limited solely to circumstances relating to the financial and living situation of the police officer in connection with his/her discharge from police service. Taking into account those actions voluntarily undertaken by a police officer who has been discharged, which were not necessary for him/her and which had negative consequences for his/her financial situation, would place the administrative authority, when determining the amount of the financial benefit granted to him/her, in a privileged position in relation to a police officer who had a comparable financial and living situation and who had not voluntarily undertaken certain actions in his/her financial sphere which had negative consequences for him/her.

The calculation of the benefit must therefore be based on all of the evidence gathered in the case. The omission of certain circumstances, especially those unfavourable to the recipient, could lead to a distortion of the sense of the institution and at the same time indicate selective treatment of the evidence. Consequently, it would lead to an infringement of the essence of granting an administrative authority the power to act within the limits of administrative recognition, which obliges it to take into account not only the legitimate interest of the party, but also the public interest. The legitimate interest of the party must not, in turn, be in clear contradiction with the public interest. These values must be balanced. Otherwise, this would result in a decision that is not discretionary, but arbitrary, taking into account only the particular interest of the police officer concerned.

However, it is impossible to refer to all of the possible facts that could arise, so it is worth noting that each case should be treated individually. The assessment should take into account all of the circumstances that have arisen, and should be made on the basis of the evidence gathered in the administrative proceedings, and should be reflected in the detailed justification of the administrative decision. The party must be convinced that the determination of the amount of the benefit granted took place within the limits set out in Article 7 of the Code of Administrative Procedure, and the decision issued is not arbitrary in nature, i.e. it exceeds the limit of administrative approval.

**Conclusion**

The discharge of a police officer from service definitively terminates the legal relationship between him/her and his/her employer. In some cases,
however, the decision to discharge a police officer from service is revoked; it will be annulled due to the qualified defects it is burdened with, or the circumstances referred to in Article 42(7)(1) or (2) of the Police Act. In the cases mentioned above, official pragmatics provides for restoration to service, which takes place by virtue of law, without the knowledge or even against the will of the person concerned. A police officer is entitled to report his/her readiness to take up service immediately within the time limit indicated in Article 42(2) of the Police Act, which will confirm that the re-initiated service relationship has its basis in the voluntary readiness of the reinstated police officer to perform it. Failure to meet this requirement, as well as failure to meet it within the deadline indicated in the aforementioned provision, results in the necessity to terminate the service relationship on the basis of Article 41(3) of the Police Act. It is only when the requirement provided for in Article 42 (2) of the Police Act is fulfilled that the superior in charge of personal matters is obliged to verify whether, after discharge from service, there are no circumstances that prevent a police officer from being admitted to service. Therefore, this verification is of a follow-up nature and is conditional on the restoration of the police officer by correctly completing the activity referred to in Article 42(2) of the Police Act. On the other hand, positive verification of a police officer makes it possible for him/her to be admitted to service, and thus to be appointed to a specific official position where he/she will be able to perform service, until a written notification of leaving the service has been submitted, or until the condition which obliges or entitles him/her to be discharged from service has materialised. If, however, after being restored to service, it turns out that, despite notification of readiness to take up service immediately, a policeman cannot be admitted to it because, after his/her release, circumstances occurred that made him/her unable to perform service, the service relationship shall be terminated on the basis of Article 41(2) (5) of the Police Act, unless there are other grounds for his/her discharge.

The institution of restoration to service is aimed at protecting the rights of persons discharged from service in the Police, in the event of repeal, elimination from circulation of the decision on discharge, as well as certain decisions being issued. However, since the restoration to service takes place by virtue of the law itself, without any activity on the part of the restored police officer, it is of a conditional and temporary nature, until the police officer declares his/her readiness to take up service immediately, as well as to verify whether, after his/her release, such circumstances have occurred that prevent his/her admission to service. This is primarily due to the voluntary nature of service in the Police, as well as the fact that the mere restoration to service does not release a police officer from all of the qualities necessary for the performance of that service.

The legal construction of the restoration institution itself is multistage and complex. This is all the more justified because even in the case of an unjustified discharge of a police officer from service, in the period from the day of his/her discharge to the day of his/her return to service, a number of circumstances may occur which will hinder or even prevent
him/her from continuing his/her service. Return to service does not release a police officer from the obligation to demonstrate all of the qualities necessary for the performance of service. Therefore, despite the fact that the discharge from service itself was found to be defective, the legislator assumed that it is necessary to verify the qualities of the police officer restored to service again. Thus, he/she gave priority to the interest of the service, over the particular interest of the individual (police officer).

The institution of restoring a police officer to service is therefore an optimal legal structure which, to a certain extent, reduces the negative consequences of improper discharge from it. In principle, restoration is *ex nunc*. However, the annulment of the discharge decision should (in principle) eliminate all of the consequences of that decision with *ex tunc* effect. Against this background, the fundamental question is how to reconcile the regulations contained in the provisions of the administrative procedure with those contained in the Police Act, including Article 42(6) of the Police Act. In the case of restoration to service, only the period for which the financial compensation referred to in Article 42(5) of the Police Act was granted shall be included in the period of service taken into account in determining the period on which the entitlements indicated in that provision depend, while the period of staying out of service for which the police officer did not receive a benefit shall not be considered a break in service in terms of entitlements dependent on uninterrupted service. It should also be noted that the regulation contained in the Police Act is of a special nature because it comprehensively defines the principles and procedures for restoring a police officer to service in the Police. However, regulations outside the scope of official pragmatism may be applied only if the specific regulation contains a reference to them. This provision is certainly provided for in Article 19(2) of the resolution of 14 May 2013, which requires the application of the provisions of the Code of Administrative Proceedings to proceedings in personal cases concerning the establishment, change and termination of the service relationship in the scope not regulated by this regulation.

Thus, it seems justified to argue that, in fact, the elimination of a discharge decision as a result of its annulment does not eliminate all of the effects it has caused, as the restoration to service takes place from the date on which the decision declaring the discharge decision invalid became final and the period during which the police officer remained out of service may be considered as a period of service on which the powers indicated in Article 42(6) of the Police Act depend, only to the extent that the police officer has been granted the cash benefit referred to in Article 42(5) of the Police Act. Therefore, the elimination of a decision on discharge from service as a result of its annulment must result in the assumption that a kind of termination of the service relationship has taken place and not discharge from service, as the decision in this case was eliminated from legal circulation with *ex tunc* effect. Thus, even the annulment of a discharge decision does not lead to the state of affairs as it existed before the decision was issued because it does not mean that a police officer has been performing this service continuously, *i.e.* since the date indicated
in the discharge decision. It should only be noted that if it were to be assumed that a declaration of invalidity would result in a return to the state of affairs that existed before the decision on dismissal from service was issued, which was found to have one of the qualified defects, then it should be consistently assumed that the dismissal did not take place and that the policeman/woman continuously performed this service. However, it would then be impossible to apply the structure provided for in Article 42 of the Police Act. It would not be possible to restore a police officer who remained in service, as restoration to service refers only to situations in which the officer had previously been effectively released from service. However, this issue exceeds the framework of this study and requires separate treatment, including in particular a thorough and extended analysis.

References

Publications

Gacek P, Przesłanki pozytywne stwierdzenia nieważności rozkazu personalnego o nawiązaniu, zmianie albo rozwiązaniu stosunku służbowego z funkcjonariuszem Policji, Administracja. Teoria, dydaktyka, praktyka, 2016, No. 4 (45).
Gacek P, Skutki stwierdzenia nieważności rozkazu personalnego o zwolnieniu ze służby w Policji w kontekście przywrócenia do niej na podstawie art. 42 ust. 1 ustawy z dnia 6 kwietnia 1990 r. o Policji. Gubernaculum et Administratio, 2020, Iss. 2 (22).


**Legal acts**


Ustawa z 6 kwietnia 1990 o Policji, consolidated text, Dz. U., 2020, item 360 as amended.


Ustawa z 24 sierpnia 2001 — Kodeks postępowania w sprawach o wykroczeniach, consolidated text, Dz. U., 2020, item 729 as amended.

Rozporządzenie ministra spraw wewnętrznych z 14 maja 2013 w sprawie szczegółowych praw i obowiązków oraz przebiegu służby policjantów, Dz. U., 2020, item 1113.

**Other sources**

Uchwała SN z 5 grudnia 1991, sygn. I PZP 60/91, Legalis No. 27539.


Wyrok NSA z 9 maja 2005, sygn. OSK 1550/04, Legalis No. 824790.

Wyrok NSA z 3 października 2006, sygn. I OSK 210/06, Legalis No. 606379.

Wyrok NSA z 5 stycznia 2007, sygn. I OSK 568/06, Legalis No. 109058.

Wyrok NSA z 16 lutego 2009, sygn. I OSK 370/08, Legalis No. 183583.
Wyrok NSA z 27 lutego 2009, sygn. I OSK 510/08, Legalis No. 1249280.
Wyrok NSA z 8 czerwca 2009, sygn. I OSK 1102/08, Legalis No. 231578.
Wyrok NSA z 2 lipca 2010, sygn. I OSK 113/10, Legalis No. 543833.
Wyrok NSA z 6 października 2011, sygn. I OSK 1192/11, Legalis No. 388224.
Wyrok NSA z 26 stycznia 2012, sygn. I OSK 902/11, Legalis No. 448251.
Wyrok NSA z 24 lipca 2013, sygn. I OSK 1968/12, Legalis No. 764627.
Wyrok NSA z 21 sierpnia 2013, sygn. I OSK 803/13, Legalis No. 764726.
Wyrok NSA z 10 czerwca 2014, sygn. I OSK 1409/13, Legalis No. 1043014.
Wyrok NSA z 14 października 2015, sygn. I OSK 327/14, Legalis No. 1387238.
Wyrok NSA z 14 stycznia 2016, sygn. I OSK 764/14, Legalis No. 1453444.
Wyrok NSA z 18 lutego 2016, sygn. I OSK 2932/14, Legalis No. 1509995.
Wyrok NSA z 10 marca 2016, sygn. I OSK 2533/14, Legalis No. 1455932.
Wyrok NSA z 4 sierpnia 2017, sygn. I OSK 1253/16, Legalis No. 1664020.
Wyrok SA w Szczecinie z 27 marca 2019, sygn. I ACa 520/18, Legalis No. 2180740.
Wyrok WSA w Bydgoszczy z 29 lutego 2012, sygn. II SA/Bd 1414/11, Legalis No. 867102.
Wyrok WSA w Bydgoszczy z 3 września 2014, sygn. II SA/Bd 704/14, Legalis No. 1116870.
Wyrok WSA w Bydgoszczy z 28 sierpnia 2018, sygn. II SA/Bd 454/18, Legalis No. 1866178.
Wyrok WSA w Bydgoszczy z 11 września 2018, sygn. II SA/Bd 415/18, Legalis No. 1831811.
Wyrok WSA w Gliwicach z 10 września 2007, sygn. IV SA/Gl 187/07, Legalis No. 113217.
Wyrok WSA w Krakowie z 8 marca 2012, sygn. III SA/Kr 751/11, Legalis No. 866175.
Wyrok WSA w Krakowie z 8 marca 2012, sygn. III SA/Kr 752/11, Legalis No. 866156.
Wyrok WSA w Lublinie z 6 maja 2010, sygn. III SA/Lu 72/10, Legalis No. 264668.
Wyrok WSA w Lublinie z 22 grudnia 2011, sygn. III SA/Lu 355/11, Legalis No. 439943.
Wyrok WSA w Łodzi z 13 listopada 2009, sygn. III SA/Łd 462/09, Legalis No. 333666.
Wyrok WSA w Łodzi z 3 sierpnia 2018, sygn. III SA/Łd 235/18, Legalis No. 1814940.
Wyrok WSA w Poznaniu z 25 listopada 2009, sygn. II SA/Po 400/09, Legalis No. 343653.
Wyrok WSA w Poznaniu z 13 marca 2013, sygn. IV SA/Po 1175/12, Legalis No. 780407.
Wyrok WSA w Szczecinie z 14 października 2009, sygn. II SA/Sz 488/09, Legalis No. 393123.
Wyrok WSA w Szczecinie z 20 kwietnia 2011, sygn. II SA/Sz 256/11, Legalis No. 377371.
Wyrok WSA w Szczecinie z 21 września 2011, sygn. II SA/Sz 648/11, Legalis No. 385225.
Wyrok WSA w Warszawie z 29 listopada 2007, sygn. II SA/Wa 1611/07, Legalis No. 292963.
Wyrok WSA w Warszawie z 18 czerwca 2009, sygn. II SA/Wa 214/09, Legalis No. 242400.
Wyrok WSA w Warszawie z 7 czerwca 2011, sygn. II SA/Wa 392/11, Legalis No. 342851.
Wyrok WSA w Warszawie z 12 grudnia 2011, sygn. II SA/Wa 1324/11, Legalis No. 411698.
Wyrok WSA w Warszawie z 6 września 2016, sygn. II SA/Wa 579/16, Legalis No. 1514491.
Wyrok WSA w Warszawie z 11 października 2017, sygn. II SA/Wa 500/17, Legalis No. 1694970.
Wyrok WSA w Warszawie z 16 października 2017, sygn. II SA/Wa 303/17, Legalis No. 1691823.

DOI: 10.5604/01.3001.0014.8464
http://dx.doi.org/10.5604/01.3001.0014.8464

**Keywords:** Police, police officer, service relationship, restoration to service, discharge from the service

**Summary:** The article is entirely devoted to issues related to restoration to service based on Article 42 of the Act on the Police. Restoration to service occurs by virtue of law upon the occurrence of the conditions referred to in Article 42(1) or (7) of the Act on the Police. Restoration to service does not, however, mean admission to the service. A police officer must declare readiness for immediate service in order for the supervisor to verify whether he/she has all of the qualities that are necessary to perform it. The conditions contained in Article 42(2) and (3) of the Act on the Police must be completed in order for the police officer to be appointed to an official post.