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SERVICE IN POLICE FORCES AND LABOR CODE

Introduction

The aim of the article is to discuss the specific character of work in Police in comparison to the employment that is based on the regulations of the Labor Code. The article presents the differences between the establishment of employment in line with the labor law regulations and the commencement of the service in police forces. The article's objective is also to present the specific character of work in police forces.

1. Police force and its responsibilities

Article 1, Act on Police introduces the definition and basic duties of the Police in Poland¹. Thus the Police is established as a uniformed and armed force serving the society and aiming at the protection of people's safety and the maintenance of public safety and order. Article 1, item 1 of the Act provides a list of the basic tasks of the Police. The list is general in character as the extension of the responsibilities and their detailed description are given in other provisions of the Act on Police, in specific acts, appropriate secondary legislation and internal normative acts (bylaws, rules, decisions, guidelines and agreements with public administration units and other bodies). Thus, the main tasks of the Police comprise the following:

- 1) protection of people's life and health and protection of property against lawless assaults which might cause damage to those goods,
- 2) protection of public safety and order, including ensuring peace in public places and in public means of transport, road traffic and on waters allocated for common use,

¹ Act of 6 April 1990 on Police (unifrom text: Journal of Laws 2015, item 355, as amended)

- 3) initiation and organization of activities aimed at preventing crimes and petty offences and crime-related events, and cooperation with state authorities, local governments and social organizations in that regard,
- 4) detection of crimes and petty offences and prosecution of perpetrators thereof,
- 5) supervision of specialized armed security forces within the scope laid down in separate provisions,
- 6) controlling whether administrative provisions and codes of order related to public activity or binding in public places are observed,
- 7) cooperation with Police forces from other countries and their international organizations on the basis of agreements and international treaties and separate regulations,
- 8) gathering, processing and forwarding criminal information, running a database with information on the results of the analysis of deoxyribonucleic acid (DNA)
- 9) moreover, the Police should also perform the tasks resulting from international treaties and agreements, on conditions and within the scope specified thereof.

It can be concluded from the above that the range of duties of police is wide and their performance has a substantial impact on the safety of the society.

2. Admission to the Police versus the establishment of an employment relationship

To serve in the Police one has to be a Polish citizen with impeccable opinion, with no criminal record, enjoying full civil rights, having at least secondary education, as well as physical and mental fitness to serve in the armed forces subject to special service discipline to which one is ready to surrender and also gives assurance to maintain confidentiality in accordance with the requirements given in the provisions on the protection of confidential information². The recruitment procedure aims at determining whether a candidate meets the requirements of admission given in the Act and his/her predispositions to serve, including the predispositions listed in art 25, item 1 of the Act. The procedure is conducted in the form of a competition which consists in the following steps:

² Act of 6 April 1990 r. on Police (consolidated text: Journal of Laws 2015, item 355 as amended)



- 1) submission of an admission application, personal questionnaire of the candidate and documents confirming the required education and vocational qualifications and the history of previous employment;
- 2) test on the knowledge on the issues concerning the functioning of the legislative, executive and judicial powers and the area of public safety;
- 3) physical fitness test;
- 4) psychological test to determine the candidate's intellectual and personality predispositions to serve in the Police;
- 5) interview with the candidate to assess his/her ability to express verbally, to maintain verbal and non-verbal contact, to listen to his/her self-presentation and to determine the candidate's motivation;
- 6) assessment of the candidate's physical and mental abilities to serve;
- 7) a check in registers, archives and files the credibility of data given the candidate's personal questionnaire;
- 8) a check procedure as defined in the provisions on the protection of confidential information.

Detailed rules regarding the admission procedure to the Police force are regulated by the Ordinance of the Minister of Internal Affairs of 18 April 2012 on admission procedures for applicants to police force (Journal of Laws, 2012, item 432 as amended)³. The Ordinance describes in detail the qualification procedure, particularly its subsequent stages and scoring methods. Enclosure 2 to the Ordinance includes the framework of the physical fitness test, the description of exercises and scoring methods.

Having passed successfully the qualification procedure, the policeman makes an oath before taking the service duties : “I, the citizen of the Republic of Poland, being aware which duties of a police officer I am about to undertake, solemnly swear: to serve faithfully to the Nation, protect the legal order established under the Constitution of the Republic of Poland, protect the security of the State and its citizens, even at risk to my life. While executing the duties I am entrusted with, I solemnly swear to thoroughly abide by the law, be faithful to the constitutional organs of the Republic of Poland, comply with the service discipline and execute the orders and instructions of my superiors. I swear to protect the state and service secrets, as

³ Ordinance of the Minister of Internal Affairs of 18 April 2012 on admission procedures for applicants to police force (Journal of Laws , 2012, item 432 as amended)

well as the honor, dignity and good name of the Service, and to observe the rules of professional ethics.”⁴ The oath is a very important step after which the policeman starts his service in the Police⁵. Having done that, the policeman accepts the duty to follow the rules of professional ethics.

Pursuant to Article 22 of the Labor Code, by establishing an employment relationship, the employee assumes the obligation to perform specific work for the employer and under the employer's direction at a place and time specified by the employer, and the employer assumes an obligation to employ the employee against payment of remuneration⁶. Thus, the establishment of an employment relationship is carried out by means of signing an appropriate statement. Employment relationship, being subject to labor law regulations, has a specific character that differentiates it from civil law, administrative law or penalty regulations. Irrespective of the legal basis, employment relationship constitutes an obligation that is based on labor law. The specificity of employment relationship also lies in features that make it different from civil law and administrative law relationships within which work is provided. They are such features as: the right of free choice to accept the relationship, remunerative and personal character of work provision and the subordination of the employee (the superiority of the employer) which is expressed mainly in the possibility to give orders to employees as regards work⁷.

As opposed to the labor relationship which is based on the Labor Code, the service in Police is administrative in nature, which means that the authority can unilaterally and authoritatively influence the legal situation of a police officer and has the right to select the staff for particular superiors. That also means that police officers must be flexible in terms of task and time, which results in the acceptability of unilateral changes in service conditions with the consideration of the objective criteria regarding the mobility and efficiency of the Police and not of the personal feelings of the officers⁸. A police officer is not an employee in the sense of Article 2 of the Act of 26 June 1974, Labor Code, and consequently his/her service relationship is not a labor but an administrative relationship. Consequently, an appropriate superior is competent to change

⁴ Act of 6 April 1990 on Police (consolidated text: Journal of Laws, 2016, item 355 as amended)

⁵ A. Warmiński, *Administracja bezpieczeństwa i porządku publicznego w Polsce*, Elipsa Dom Wydawniczy 2013, p. 205.

⁶ Act of 26 June 1974, Labor Code (consolidated text: Journal of Laws 2014, item 1502 as amended)

⁷ M. Gersdorf, *Kodeks pracy. Komentarz, ed. III*, LexisNexis 2014 (commentary to Art. 22 of the Labor Code)

⁸ Judgement of the Provincial Administrative Court in Warsaw of 15 November 2006, files No. II SA/Wa 1152/06, LEX 328767.

unilaterally crucial elements of the relationship. The freedom of choice occurs only when the applicant is making decision to join the police force⁹. The Chief Constable enters into a service relationship with an applicant by appointing him/her. The appointment can be permanent, for the period of candidate service or preparatory service¹⁰.

Service in the Police is a specific type of public service that is subject to particular rules and restrictions. The service relationship of police officers requires flexibility in terms of tasks and time and subordination to specific discipline. The boundaries to that flexibility are defined by the Act on Police and the resulting implementing acts¹¹. The conditions for the employment in the Police are strictly defined. As a result, it is not possible to set the candidates other requirements than the ones provided by the provisions of law. Moreover, the candidates cannot be exempt from these requirements unless such option is not provided by the Act¹².

3. Employee rights

It should be taken into consideration that the Act on Police does not refer in principle to the provisions of the labor law. In the justification of the order of 17 January 1997¹³, the Supreme Court stressed the fact that the service relationship in the Police force is administrative in nature and, consequently, there is a possibility to apply other provisions only in the scope that results from the act. In this case the rule given in article 5 of Labor Code stating that *If the employment relationship of a specific category of employees is governed by special regulations, the Labor Code shall apply to the extent not provided for in those special regulations*. That – according to the Court – results from the fact that the service relationship of a policeman is not a relationship of labor in the sense of art.2 Labor Code but a relationship of administrative law. The Court also emphasized the fact that the Act on Police does not include a provision that in the cases that are not regulated by the act, adequate provisions of the Labor Code should be applied¹⁴. Thus, not much can be said about employee rights in the police force. The scarce “employee” regulations that can be found in the Act on Police are as follows:

⁹ Judgement of the Provincial Administrative Court in Poznań of 5 February 2009, sygn. akt: IV SA/Po 430/08, LEX nr 484089 and the judgement of the Provincial Administrative Court in Warsaw of 5 April 2006, files No. II SA/Wa 66/06.

¹⁰ P. Gacek, *Nawiązanie stosunku służbowego z funkcjonariuszem Policji*, ATDP 2011, No. 2, p. 89.

¹¹ Judgement of the Provincial Administrative Court in Warsaw of 13 February 2007, files No. II SA/Wa 2239/06, LEX 318269.

¹² M. Liwo, *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, LexisNexis 2013, p. 317.

¹³ Order of 17 January 1997 of the Supreme Court, files No. I PKN 66/96, OSNP 1997, No. 20, item 401.

¹⁴ Ł. Czebotar, *Ustawa o Policji. Komentarz praktyczny*, Wolters Kluwer 2015

1) With reference to the Labor Code:

a) A police officer is entitled to employee rights related to parenthood as provided by the Labor Code:

- maternity leave, additional maternity leave, paternity leave, parental leave, child-care leave;
- pregnant women and employees taking sole care of a child up to 4 years of age or a person that requires constant assistance cannot perform any night work between 22:00 – 6:00, on Sundays and holidays (that was modified by a regulation on police roster duty periods¹⁵ : service on Sundays or holidays and in night hours cannot be performed by police officers who are the only carers of a child up to 8 years of age or a person that requires permanent care, by police officers who take care of a child up to 8 years of age if the other child's parent or guardian does not take advantage of such right and by a female police officer that breastfeeds her child without their prior consent);
- the only carers of a child of up to 4 years of age or a person that requires permanent help cannot be posted to work outside of the permanent workplace without their consent.

2) Although there is no direct reference to the Labor Code, there are significant resemblances in both legal acts. Here are the examples:

- a) a contract with a police officer cannot be terminated during pregnancy, maternity leave, additional maternity leave, paternal leave or parenthood leave, with exceptions¹⁶;
- b) a police officer is entitled to an annual paid holiday leave;
- c) a police officer may be granted a paid health or compassionate leave or an unpaid leave on important grounds;
- d) The service in the Police is considered work of special nature in the meaning of the provisions on old-age and disability pensions from the Social Insurance Fund¹⁷.

¹⁵ Ordinance of the Minister of Internal Affairs of 18 October 2001 on police roster duty periods (Journal of Laws, 2001, No.131, item 1471 as amended.)

¹⁶ With the exceptions given in art. 41 item 1 points. 3 and 4 and item 2 points 2, 3, 5 and 6 – Act of 16 April 1990 on Police (consolidated text: Journal of Laws, 2015, item 355 as amended).

¹⁷ Act of 17 December 1998 r. on old-age and disability pensions from the Social Security Fund (consolidated text: Journal of Laws, 2015 r., item 748 art. 192 as amended).

Pursuant to Art. 79 of the Act on Police, police officers are entitled to employee rights related to parenthood as stated in the Labor Code unless the provisions of the act provide otherwise. The rights include the possibility to take a maternity leave, additional maternity leave, paternity leave, parenthood leave, child-care leave, the prohibition to employ pregnant women and the sole carers of a child at the age of up to 8 years or a person that requires permanent help and breastfeeding policewomen at nights between 22.00 and 6.00 and on Sundays and holidays – without their prior consent and to post a sole carer of a child at the age of up to 4 years or a person that requires permanent help to work outside of the permanent workplace - without their consent. The exceptions to the above rights that are given in the act include regulations stating that parental rights are given only to one of the parents and the lack of the right to apply for the reduction of duty period in the course of the child-care leave. The above regulations regarding the protection of parental rights of police officers are the only ones that have an impact on their roster duty periods because – as it was mentioned above – the flexibility in terms of tasks and time is a crucial quality of police officers and this is the reason why their service relationship is administrative in nature. However, the introduction of such regulations to the Act on Police is understandable as police officers also start families and the provisions on their parenthood rights are indispensable and should be similar to the ones that concern the parenthood rights in other professions.

Moreover, it is worth presenting some examples of regulations regarding the rights of police officers that do not refer directly to the Labor Code but – due to their structure – are very similar to the Labor Code regulations concerning employee rights:

- a) exemption from service during pregnancy, maternity leave, additional maternity leave, paternity leave, parenthood leave or child-care leave is forbidden (with exceptions),
- b) annual paid holiday,
- c) paid health or compassionate leave, and also unpaid leave in justified cases,
- d) work of special nature and the resulting rights.

The above regulations can be found directly in the Act as Art.5 Labor Code stating *that If the employment relationship of a specific category of employees is governed by special regulations, this Labor Code shall apply to the extent not provided for in those special regulations* does not apply to the Act on Police. However, one should have in mind that although (or perhaps because) their employment is specific in nature and it differs from

standard employment relationship and constitutes a service to the public, police officers need holidays, timely remuneration, equal rights and social benefits. Thus, there is a justification to the fact that the regulations regarding some of the employee rights provided by the Labor Code are adjusted and somehow incorporated to the Act on Police.

Conclusions

One of the main objectives of the existence and functioning of the Police force is to provide citizens with security and to maintain public law and order. The targets are achieved within the service to the public. Thus, the Police serves the public as a whole and every individual¹⁸. The judiciary implies – although it is not stated directly in the Act – that Police is an institution of public trust, which results from the interpretation of Art.1 item 1 of the Act on Police. The status of the Police is based – among other things - on public confidence, and the scope of its operations requires that it should enjoy authority and public trust¹⁹. The service in the Police is a specific type of public service that is subject to particular rigors and restrictions. Police officers have to be flexible in terms of tasks and time which results from their consent to discipline. The limits to the flexibility are defined by the Act on Police and the related implementing acts. A police officer is not an employee in the sense of Art.2 Labor Code and, consequently, the service relationship is not a work but an administrative-law relationship. The specific character of work in the Police, when compared to the employment based on the Labor Code provisions, shows differences between establishing an employment relationship in accordance to the Labor Code and commencing the service, which is due to the fact that the service is an administrative relationship. Thus, police officers are not entitled to employee rights (with few exceptions) resulting from the Labor Code. That is the reason why there are so few applicants to the service.

Abstract

The aim of the article is to discuss the specific nature of work in police force in a comparative approach with the employment based on the Labor Code regulations. The article presents issues indicating to the specifics of the work and responsibilities of the Police, the

¹⁸ S. Pieprzny, *Policja. Organizacja i funkcjonowanie*, Wolters Kluwer 2011, s. 28.

¹⁹ Judgement of the Superior Administrative Court of 16 December 2010, files No. I OSK 962/10.

differences that result from establishing a working relationship in accordance with the labor law regulations or commencing a service relationship, as well as the rights of police officers that are similar to employee rights. The objective of the article is to point at the fact that a police officer is not an employee in the sense of Art.2 Labor Code and, consequently, the service relationship is not a work but an administrative-law relationship. The service in the Police force is a specific type of public service that is subject to particular rigors and restrictions.

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Legal regulations

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2. Act of 6 April 1990 on Police (consolidated text: Journal of Laws, 201, item 355 as amended)
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