

TERMINATION OF EMPLOYMENT RELATIONSHIP IN UNIFORMED SERVICES IN CONNECTION WITH THEIR REORGANISATION OR DISSOLUTION – CONSTITUTIONAL ISSUES

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ABSTRACT

This article addresses the legal issues arising from the transformation of internal security bodies within the structure of public administration, specifically focusing on how such events impact the service relationship of officers employed in those structures (the so-called ‘uniformed services’). The analysis covers regulations governing the service relationships of officers in the State Protection Office, Government Protection Bureau, and Customs Services in connection with the dissolution of these institutions and the establishment of the Internal Security Agency, the Intelligence Agency, the State Protection Service, and the Customs and Fiscal Service. Theoretical and legal models are identified, and substantive legal provisions are presented to assess their compliance with the relevant provisions of the Constitution of the Republic of Poland.

Keywords: public administration, officer, uniformed services, public service

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INTRODUCTION

In jurisprudence, the functions of the state are defined as 'the main directions of its activity carrying out the tasks that the state sets for itself, and the scope of this activity is determined by the goals that the state wants to achieve.'¹ These functions, goals, and tasks have been debated for ages and show no sign of ceasing, as the state, being a political organisation of a large social group, is subject to various internal and external pressures that set new goals and tasks for the state, thereby influencing the evolution of state functions. The scientific debate on the tasks, goals, and functions of the state, in which political scientists, lawyers, sociologists, and philosophers particularly often express their opinions, takes place on the theoretical plane, where concepts of an ideal state are developed, and on the practical plane, i.e., in relation to the current activities of the structures and institutions created by the state. It is worth noting that observations made in connection with the actual activities of the state very often lead to *pro futuro* demands aimed at improving these activities and indicating the need to extend or, quite the contrary, reduce the state tasks.

Regardless of how the state's functions, tasks, and goals, as well as their classification are viewed, it is impossible to discuss them without considering the structures (institutions) created by the state. These structures, through the employment of people, carry out the tasks entrusted to them, striving to achieve specific goals that determine the state functions. It is evident that each state has the freedom to determine the goals it wants to achieve and can establish institutions to carry out tasks to achieve these specific goals. However, this freedom is not absolute: in legal terms, it is limited by international law binding the state, on the one hand, and by constitutional law, on the other. In a democratic state governed by the rule of law, the constitution should be perceived not only as a normative act with the highest legal force but also as a source that makes it possible to decode the state goals. There is no doubt in the literature that these goals should, in particular, include ensuring the security, in its various dimensions,² of both the citizens and the state. These goals are pursued by a specialised administrative apparatus, including

¹ Seidler, G.L., Groszyk, H., Pieniążek, A., *Wprowadzenie do nauki o państwie i prawie*, Lublin, 2003, p. 64.

² Florczak-Wątor, M., *Komentarz do art. 5*, in: Safjan, M., Bosek, L. (eds), *Konstytucja RP. Tom I*, Warszawa, 2016, p. 288. When discussing the state security we can consider its internal and external aspects. According to K. Wojtaszczyk the essence of internal security lies in functioning of the state in such a way that ensures counteraction, elimination, or limitation of threats to the political system, public order and peace and allows for the protection of the public interest of specific societies and individual citizens, cf. Wojtaszczyk, W., 'Istota i dylematy bezpieczeństwa wewnętrznego', *Przegląd Bezpieczeństwa Wewnętrznego*, 2009, No. 1, p. 14. External security is most often interpreted as the lack of threats from foreign entities and other sources, allowing for sovereign determination and accomplishment of national interests and strategic objectives, Sulowski, S., 'O nowym paradygmacie bezpieczeństwa w erze globalizacji', in: Sulowski, S., Brzeziński, M. (eds), *Bezpieczeństwo wewnętrzne państwa. Wybrane zagadnienia*, Warszawa, 2009, p. 14. At the same time, it is worth noting that, contemporarily, due to the process of globalisation, the borderline between internal and external security is blurring, see Marczuk, K.P., 'Bezpieczeństwo wewnętrzne w poszerzonej agendzie studiów nad bezpieczeństwem (szkoła kopenhaska i human security)', in: Sulowski, S., Brzeziński, M., op. cit., p. 76.

primarily the governmental administration and, additionally, some auxiliary bodies.³ Ensuring security in the broad sense is part of the fundamental function of the state, i.e., its protective function.⁴

People who, as part of their obligations arising from legal (employment) relationships binding them to the structures of public administration, substantially contribute to achieving the state's goals, are the most important substratum of public administration bodies. The transformation of the public administration apparatus tasked with security in its broad sense obviously has consequences in the sphere of employment, regardless of whether it is employee-related in nature and subject to the employment law regime (employment relationship) or regulated by the provisions of administrative law (public service relationship). Changes introduced in the public administration apparatus do not consist only of the redefinition of tasks and goals, a new definition of organisational structures and financing principles, or a new specification of coordination and supervision relationships between a body managing a particular entity and other public authorities, but also in the dissolution of one structure and the establishment of a new one in its place. As a result, the legislator faces the challenge of deciding on the future of employment relationships entered into by an institution carrying out specific tasks and establishing another structure to replace the former. Theoretically, several normative models can be imagined. The first consists of the abolition of all employment relationships and providing the new structure with the complete freedom to develop its own staffing policy. In the opposite model, a new structure replaces the employment relationships of the institution to which it is a legal successor, which is equivalent to taking over all the employees. Finally, the third solution, essentially a hybrid one, assumes taking over the employees but only for a transitional period, during which the employment structure is adjusted to the needs of the new entity, resulting from its tasks and organisational structure.

This article aims to evaluate the provisions specifying rules for terminating service relationships with officers of uniformed services in connection with organisational changes in those institutions. Examples of such activities after 1989 include the replacement of the State Protection Office (SPO) by the Internal Security Agency (ISA) and the Intelligence Agency (IA), and the Government Protection Bureau (GPB) by the State Protection Service (SPS), as well as the dissolution of the Customs Service and the establishment of the National Fiscal Administration (NFA) instead. The assessment of the normative models used by the legislator while dissolving these uniformed services and establishing new ones will be made from the perspective of the protective function of the state and law, because it does not seem appropriate for the legislator to have absolute discretion to act in such situations. Therefore, Article 2, as well as Article 60 of the Constitution of the Republic of Poland should be of key importance, as employment in the so-called uniformed services, which include the above-mentioned structures, is a way of performing public service.

³ Pieprzny, S., *Administracja bezpieczeństwa i porządku publicznego*, Rzeszów, 2008, p. 73, Liwo, M., *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warszawa, 2013, p. 109.

⁴ Florczak-Wątor, K., op. cit., p. 285.

NORMATIVE MODELS OF DISSOLVING INSTITUTIONS PERFORMING SECURITY RELATED TASKS: THE SPHERE OF SERVICE RELATIONSHIPS

The first normative model to be presented here is the one used by the legislator in connection with the dissolution of the State Protection Office and the establishment of the Internal Security Agency instead. In accordance with Article 1 of the Act of 24 May 2002 concerning the Internal Security Agency and the Intelligence Agency,⁵ matters concerning protection of the internal security of the state and its constitutional order are within the competence of the ISA, while, pursuant to Article 2 AISAIA, matters related to protection of the internal security of the state are within the competence of the IA. The ISA and the IA were established to separate the structures responsible for the internal security of the state from the intelligence structures. Before their establishment, the State Protection Office integrated the tasks into one structure, which had the prerogatives of the state security service recognising and counteracting threats in the economic and political spheres.⁶

In accordance with Article 228(1) AISAIA, officers serving in the State Protection Office on the date of the Act entry into force, with the exception of officers of the Intelligence Directorate of the State Protection Office, became ISA officers, maintaining their former service terms and continuity of service. By analogy, the Intelligence Directorate officers became IA officers (Article 228(1) AISAIA). The solution used by the legislator allowed for the continuation of the performance of tasks that had been formerly carried out by the State Protection Office and were transferred to the two new entities established to replace it: the ISA and the IA.

The principle of continuity of service resulting from Article 228(1) and (2) AISAIA was chronologically limited due to the regulation laid down in Article 230 AISAIA. In light of Article 230(1), the Heads of the ISA and the IA, each within the scope of their activities, within 14 days of the Act entry into force, proposed new terms of service to the officers concerned or terminated their service relationships. Within the period specified in Article 230(2) AISAIA, an officer could submit a declaration of acceptance or refusal to accept new terms of service, and the lack of a declaration of refusal was treated as tantamount to acceptance of the proposal.

The termination of the service relationship was an *ad hoc* solution created for the decision-making process focused on selecting officers serving in the State Protection Office, and for the staffing policy adopted by the heads of the two newly established special services. In particular, neither the Act on the State Protection Office provided for, nor AISAIA provides for the termination of the service relationship.⁷

⁵ Journal of Laws of 2022, item 557, as amended, hereinafter 'AISAI A'.

⁶ See the justification for the Bill on the ISA and IA, print 276, p. 78; [https://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/276/\\$file/276.pdf](https://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/276/$file/276.pdf) [accessed on 23 February 2023].

⁷ The provisions of the other so-called service pragmatics do not provide for this method of terminating service relationships. Cf. Szustakiewicz, P., *Stosunki służbowe funkcjonariuszy służb mundurowych i żołnierzy zawodowych jako sprawa administracyjna*, Warszawa, 2012, Wieszorek, M., *Charakter prawny stosunków służbowych funkcjonariuszy służb mundurowych*, Toruń, 2017.

Decisions on the submission of proposals for new terms of service and the termination of service relationships required the decision-making body to consider the criteria laid down in Article 230(1) AISAIA, i.e., an officer's professional qualifications, suitability for service in the ISA or the IA, employment limits and budget resources, as well as the planned organisational structure. The temporal aspect of these decisions was also important. Decisions, which had extremely significant life consequences for the officers, were to be taken within 14 days of the date of AISAIA's entry into force.

The next normative model is the one used in connection with far-reaching changes in the scope of tasks performed by the tax and customs administration. The fundamental reform of this part of the public administration apparatus, the normative framework of which is laid down in the Act of 16 November 2016 on the National Fiscal Administration,⁸ was dictated, as stated *expressis verbis* in the preamble to ANFA, by 'concern for the financial security of the Republic of Poland and the need to protect the security of the customs area of the European Union.' Its implementation required, *inter alia*, determining the legal consequences of the structural transformations within the sphere of service relationships of officers of customs administration. Article 165(3)–(4) of the Act of 16 November 2016: Provisions introducing the Act on the National Fiscal Administration⁹ stipulates that the service relationships of customs officers shall be transformed so that the officers maintain their employment status as officers of the Customs and Fiscal Service (CFS). At the same time, however, in accordance with the procedure laid down in Article 170 PANFA, the termination of service relationships of the CFS officers serving in the NFA units, referred to in Article 36(1)(2), (3) and (6) ANFA, is provided for. It should be noted that the termination of the service relationship resulted from generally different situations. The essence of the first situation was a failure to submit a proposal for new terms of service to an officer (Article 170(1)(1) PANFA). The termination of the service relationship also resulted from the lack of acceptance of new terms of service by an officer of the CFS (Article 170(1) (2) PANFA); failure to submit a declaration was tantamount to a refusal to accept the proposal. Service relationships of the officers who did not receive proposals for new terms of service expired on 31 August 2017, and service relationships of those officers who refused to accept new terms of service expired three months from the first day of the month following the month in which they submitted declarations of refusal to accept new terms of service, but no later than on 31 August 2017.

Regardless of whether the termination of the service relationship resulted from the lack of a proposal for new terms of service or from the refusal to accept this proposal, it was treated as dismissal from service (Article 170(3) PANFA).

At the same time, it should be emphasised that PANFA lays down the deadline for the basic assessment of officers, which determines the prospects for their employment in the NFS. Article 170(7) PANFA stipulates that officers who will not

⁸ Journal of Laws of 2022, item 813, as amended, hereinafter 'ANFA'.

⁹ Journal of Laws of 2016, item 1948, as amended, hereinafter 'PANFA'.

be offered new terms of service shall be informed of this fact by 31 May 2017. This means that, in practice, employment decisions had to be made within three months, as ANFA entered into force on 1 March 2017.

The decisions to submit a proposal for new service terms were based on criteria such as the officers' qualifications, service record and place of residence.

The mode of proceeding concerning service relationships in connection with the replacement of the Government Protection Bureau by the State Protection Service was determined similarly to the procedure adopted in connection with the establishment of the NFA. On the date the Act of 8 December 2017 on the State Protection Service entered into force,¹⁰ the SPS took over the tasks formerly performed by the Government Protection Bureau, the essence of which is the protection of persons and premises.¹¹ By analogy to the substitution of the State Protection Office by the ISA and the IA, the dissolution of the Government Protection Bureau and the establishment of the State Protection Service required resolving the issue of service relationships of officers serving in the GPB. The legislator applied the solution laid down in Article 359(1) ASPS, intended to be a temporary one, stipulating that officers serving in the GPB on the day the Act entered into force became officers of the SPS, maintaining the existing terms of service and its continuity. The temporary nature of the takeover of the GPB officers by the SPS was expressed by the fact that the termination of service relationships with officers who were not offered new terms of service and those who refused to accept new terms of service was planned. In the case of the first group of officers, their service relationships were to expire five months after the date of the Act's entry into force; in the case of officers who refused new terms of service, three months after the first day of the month following the month when they submitted a refusal, but no later than five months after the statute entered into force.

It is worth pointing out that, in light of Article 359(5) ASPS, officers who were not offered new terms of service within a month of the date of the statute entry into force were sure that they would receive such a proposal. This resulted from the fact that the legislator determined that deadline as one by which the SPS officers should be offered the opportunity to continue their service and would be informed about the decision.

When making decisions on the retention of officers in service, the SPS Commander based the criteria on those laid down in Article 399(3), i.e., the service records, suitability for service, and qualification requirements laid down in Article 68 ASPS.

¹⁰ Consolidated text, Journal of Laws of 2022, item 557, as amended, hereinafter 'ASPS'.

¹¹ There are two groups of people that are subject to protection by the SPS. The first one is composed of persons meeting strict requirements laid down in ASPS (Article 3(1a)–(1c), connected with their functions. The second one consists of persons who are subject to protection resulting from an individual decision based on the interest of the State (Article 3(1d)). It is worth pointing out that the tasks of the SPS, in comparison to those of the GPB, have been broadened by the addition of the tasks of recognising and preventing some categories of crime.

ASSESSMENT OF THE PROVISIONS GOVERNING TERMINATION OF SERVICE RELATIONSHIPS IN UNIFORM SERVICES IN CONNECTION WITH THEIR REORGANISATION OR DISSOLUTION

The review of the provisions concerning the legal situation of officers of the dissolved uniformed services indicates that the legislator provided two solutions: (1) continuation of the existing service relationship and its termination after a certain period (the dissolution of the SPO and the establishment of the ISA and the IA); and (2) expiry of the service relationship in the situation when an officer does not meet the criteria for joining the new service (the dissolution of the GPB and the establishment of the SPS, as well as the dissolution of the CS and the establishment of the NFA).

Each of the presented solutions in fact causes similar legal consequences, because it means termination of the service relationship of officers of the previously existing service. In the former case, it is done by giving notice – i.e., in a very formalised manner in the form of an administrative decision (a personal order)¹² – in which the authority should indicate the grounds for dismissal. In the latter case, however,

‘the expiry of the service relationship takes place *ex lege*, thus there is a legal basis for the issuance of the decision on the service relationship termination. In terms of the officer’s rights and to allow for full substantive supervision by a higher instance and administrative courts, it would be desirable for such a decision to be broader and contain the motives of the NFA body that guided it, causing the expiry of the service relationship by virtue of law.’¹³

Therefore, the expiry of the service relationship requires that the body issue an administrative decision on the termination of the service relationship.¹⁴

It is obvious that the legislator has the right to shape uniformed services in a way that adjusts them to the challenges connected with the necessity of preventing new threats to security and public order. In this respect, the Constitutional Tribunal did not question the legislator’s rights to freely shape the organisational structures of uniformed services.¹⁵ However, it was pointed out that

‘in practice, since the very beginning of the Third Republic, the favourite tool of the state staffing policy has been something that in the practice of employment law is colloquially called “group termination” of employment relationships in particular public institutions or sectors. The mechanism is not complicated but what is worth noting is the fact that it is most often activated and used by a new team soon after it comes to power.’¹⁶

¹² Cf. judgment of the Supreme Administrative Court of 5 April 2007, I OSK 896/06, LEX No. 919869.

¹³ Kotulski, M., ‘Pozycja prawna funkcjonariusza podczas formowania Krajowej Administracji Skarbowej’, *Opolskie Studia Administracyjno-Prawne*, 2020, Vol. 18, Issue 3, p. 39.

¹⁴ Cf. resolution of the Supreme Administrative Court of 1 July 2019, I OPS 1/19, CBOŚA.

¹⁵ Cf. Płażek, S., ‘Przekształcenie stosunku służbowego celnika w stosunek pracy’, *Roczniki Administracji i Prawa*, 2021, Zeszyt Specjalny, Issue XXI, p. 391.

¹⁶ *Ibidem*, p. 388.

The mechanism of terminating service relationships with officers of uniformed services in connection with the dissolution of one service and the establishment of a new one may be used for a kind of 'political vendetta' against a service that is not favoured or simply as a method of getting rid of some officers only to replace them with the new team's political nominees under the pretext of reorganisation. It should also be added that such changes have a negative impact on the state security system, as subsequent 'reorganisations' make experienced officers leave service, and they are replaced by persons who do not have the required competences; moreover, the so-called 'organisational continuity', i.e., the continuation of the performance of tasks of the given service, is disrupted.¹⁷

Therefore, it is necessary to define such conditions of organisational changes in uniformed services that will raise no doubts about their rationality and compliance with the law. In this respect, the provisions of the Constitution of the Republic of Poland and the judgements of the Constitutional Tribunal referring to them have protective significance. The Tribunal, still based on the then not yet binding Act of 6 April 1990 on the State Protection Office,¹⁸ established the rule that at least one of the basic features of the service relationship of uniformed services officers is its discretionary character, which does not mean, however, complete freedom in shaping the rules of admission to and dismissal from service.¹⁹ This stance has been consistently upheld in the Tribunal's judgements so far.

First of all, attention should be drawn to the judgement of the Constitutional Tribunal of 20 April 2004, K 45/02, which states, *inter alia*, that Article 230(1) and (7) AISAIS are unconstitutional. The Tribunal finds that the provisions infringe Articles 7, 32, and 60 of the Constitution of the Republic of Poland, i.e., the principle of the rule of law, the principle of equality, and the principle of equal access to public service.

The Tribunal emphasised that in the event the change is organisational and not structural in nature, there are no grounds for making radical changes in the staffing structure of the new special services established instead of the SPS. A structural change shapes a kind of new quality of uniformed services (as was the case with the dissolution of the uniformed services of the Polish People's Republic and the establishment of new services, the organisational structure of which and the principles of their operations were adjusted to the democratic system of the State). Meanwhile, an organisational change is only of an ordering nature; it transforms the existing structure of a uniformed service into a new one, adjusting the established structures to the new challenges connected with the protection of security, but without introducing changes in the tasks and principles of operation. Therefore, an organisational change cannot be a pretext to 'purge' of officers.

¹⁷ Cf. Ura, E., 'Likwidacja Biura Ochrony Rządu, utworzenie Służby Ochrony Państwa', *Acta Universitatis Lodzensis, Folia Iuridica*, 2019, No. 87, p. 128.

¹⁸ Journal of Laws of 1999, No. 51, item 526, as amended.

¹⁹ Cf. judgment of the Constitutional Tribunal of 8 April 1997, K. 14/96, OTK ZU No. 2/1997, item 16, p. 124.

Moreover, according to the Constitutional Tribunal,

'the Act on the ISA and the IA does not contain provisions giving grounds for making a choice between the officers whom the superiors desire to retain in the service and those whom the superiors want to dismiss. This type of selection, to which superiors are obviously entitled, may take place only in the manner provided for by statutory provisions. However, it cannot be carried out arbitrarily as part of the process of reorganising the state apparatus. Reorganisation cannot be used as an opportunity to replace the staff. This is a circumvention of the provisions guaranteeing officers increased durability of their employment.'²⁰

The provisions laying down the principles of 'transferring' officers from dissolved services to new ones should determine clear, unambiguous rules for appointing officers of the 'old' uniformed service to new positions. Provisions formulated in an unclear way, giving the superiors excessive and unjustified freedom in assigning officers to a new service, are in conflict with the principle of equality, as well as the principle of protecting the citizen's trust in the state and the law, which is derived from Article 2 of the Constitution of the Republic of Poland, and is also referred to as the principle of the state loyalty to citizens, which is a guarantee of 'the certainty of their situation, and this should be considered from the perspective of the obligation to provide citizens with legal, social, and economic security.'²¹ The principle of protecting citizens' trust in the state and the law is of a protective nature because it ensures that citizens will not be surprised by decisions of public authority bodies infringing their rights, and that the state will not introduce changes unfavourable to them for non-substantive reasons. In the case of officers of uniformed services, this principle means that 'the inclusion of the guarantee of employment stability in the statute gives grounds for reasonable expectation that the legislator will not arbitrarily change the principles of protecting the durability of employment relationships. Therefore, it is important from the point of view of arranging an individual's life plans,²² thus protecting the legal and economic security of a citizen who has chosen their life path to serve the state in specific services whose task is to protect security. Moreover,

'in a democratic state ruled by law, special guarantees of the stability of officers' service relationships, which go much further than the rules of stabilisation of the employment relationship, play multiple roles. Firstly, they constitute an important guarantee of the implementation of Article 60 of the Constitution of the Republic of Poland. It should be considered that only the law that precisely formulates the conditions for applying for admission to the service, and above all the conditions for performing it, allows for assessing whether the citizens have the right of access to the public service on equal terms. Secondly, those guarantees protect the individual rights of an officer, preventing arbitrariness in their assessment by a superior in a situation where the conditions of service require the officer's subordination and extensive availability. Thirdly, they fulfil

²⁰ Judgment of the Constitutional Tribunal of 20 April 2004, K 45/02, OTK-A 2004, No. 4, item 30.

²¹ Chmaj, M., Urbaniak, M., *Komentarz do Konstytucji RP. Art. 2*, Warszawa, 2022, p. 153.

²² Judgment of the Constitutional Tribunal of 20 April 2004, K 45/02, OTK-A 2004, No. 4, item 30.

an important political function. They constitute one of the guarantees of political neutrality and stability of special services, and a factor limiting their instrumental use for the political purposes of the current parliamentary majority.²³

The provisions establishing termination of officers' service relationships in connection with the services' dissolution or reorganisation should be constructed in such a way as not only to prevent voluntarism of superiors while taking personnel decisions, but also to define the rules of admission to a new service in a uniform manner. This way, they protect equal access to public service and guarantee that officers performing their tasks will be guided by the interests of the state and will not be afraid to undertake actions that may not be liked by people (in power or in opposition at the time) whose political interests will be affected by those actions. It is obvious that the state should be guided by objective criteria when choosing the course of action and counteracting threats. Hence, the protection of officers of uniformed services against arbitrariness in terminating their service relationships constitutes a guarantee that they will perform their tasks objectively and will not be guided by political calculations.

The legislator does not rule out the possibility of terminating officers' service relationships in the event of dissolution or reorganisation of a service. Nevertheless, decisions concerning officers should be subject to judicial supervision, as the Tribunal emphasised in its judgement of 9 June 1999, K 28/97, regarding professional soldiers: 'Article 45 (1) clearly indicates the legislator's will to cover the widest possible range of cases with the right to court. Moreover, the principle of the democratic state ruled by law results in an interpretation directive prohibiting a narrow interpretation of the right to the court.²⁴ The Constitution introduces a presumption of a judicial remedy. However, this does not mean that all restrictions on the judicial protection of the interests of an individual are inadmissible. The limitation of the right to court is expressly provided for in Article 81 of the Constitution, pursuant to which the rights specified in this provision may be asserted subject to limitations specified by statute. Limitations can also result from other provisions of the Constitution. In special, extraordinary circumstances, the right to court may be in conflict with another constitutional norm protecting values of equal or even greater importance for the functioning of the state and the development of an individual. The need to take into account both constitutional norms may justify the introduction of some limitations on the scope of the right to court. Such restrictions are admissible to the extent that is absolutely necessary if there is no other way to realise a given constitutional value. They must meet the requirements laid down in Article 31(3) of the Constitution. They may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health, or public morals, or the freedoms of other

²³ *Ibidem*.

²⁴ Judgments of the Constitutional Tribunal: of 21 January 1992, K. 8/91, OTK in 1992, Part I, p. 82; of 29 September 1993, K. 17/92, OTK in 1993, Part II, p. 308 et seq.; of 8 April 1997, K. 14/96, OTK ZU, No. 2/1997, p. 122.

persons. Such limitations shall not violate the essence of freedoms and rights.²⁵ It is inadmissible to deprive officers of the right to have the case concerning the termination of their service relationship heard by an independent and impartial court under the pretext of changes in the uniformed services. This rule is protective in nature, because as a personal right related to an individual, it allows for the protection of their interests 'always, regardless of whether in a specific situation their rights and freedoms have been infringed. The right to the court, interpreted this way, creates a sense of security of protection by the state.'²⁶ Therefore, the right to the court is of extraordinary importance for officers who should be certain that in the event their status deteriorates, they will have the right to have the correctness of their superiors' actions assessed by an entity that is not involved in the case, and whose competence and independence raise no doubts.

Therefore, the dissolution or reorganisation of a uniformed service does not mean complete freedom in terminating officers' service relationships in the event the change is actually organisational and not systemic in nature. The former judgements of the Constitutional Tribunal unambiguously defined the rules of the procedure in this respect. The principles referring to the provisions of the Constitution protect officers against arbitrary actions of the legislator, who, for non-substantive reasons (e.g. the desire for revenge), may seek to remove inconvenient officers from service.

CONCLUSIONS

The literature focused on analysing the condition of the Polish administration indicates that its most important shortcomings include, in particular, its politicisation, high staff turnover and frequent organisational changes.²⁷ At the same time, it points out that 'the ability to change constantly and effectively is considered to be an element necessary for the survival of any organisation. In the case of public organisations, changes are permanent elements of functioning, and the system of goals and values is a basic factor influencing the need to introduce change in organisations, including public ones.'²⁸ *Prima facie*, there is a contradiction between the above-mentioned views. The first one considers frequent changes to be a flaw of administration; the second one treats the transformations of organisations constituting the apparatus of administration as an indispensable element of its vitality and efficiency. However, the contradiction is superficial. In a democratic state ruled by law, transformations

²⁵ Judgment of the Constitutional Tribunal of 9 June 1998, K 28/97, OTK 1998, No. 4, item 50.

²⁶ Florczak-Wątor, M., 'Prawo do sądu jako prawo jednostki i jako gwarancja horyzontalnego działania prawa i wolności', *Przegląd Prawa Konstytucyjnego*, 2016, No. 3, p. 49.

²⁷ Rutkowski, M., 'Bank Światowy a poprawianie jakości rządzenia w zmieniającym się świecie. Sytuacja Polski i wyzwania kryzysu gospodarczego', *Zarządzanie Publiczne*, 2009, No. 3, p. 73.

²⁸ Krukowski, K., Zastempowski, M., 'Cechy zarządzania zmianami w organizacji publicznej', *Management Forum*, 2018, Vol. 6, No. 3, p. 28.

of administration, including those resulting in a new determination of its personnel composition, are necessary if they are justified by the adopted system of goals and values.

However, it is rightly noted in the literature that 'in our democracies, it is extremely difficult to understand the difference between legitimacy and legality,'²⁹ while the two concepts differ substantially. 'Legitimacy is the sense that the authorities exercise their powers well, that people in power in society are in the right place. Legality is the fact that the power is exercised in accordance with certain rules.'³⁰ The system, values, goals and rules of exercising power primarily result from the Constitution. Transformations of administration will therefore be necessary and justified in the event the Constitution is amended, to the extent determined by it to constitute the matters that public administration shall deal with. This statement cannot, however, be perceived as a demand for petrification of public administration. The ordinary legislator has a constitutionally guaranteed wide margin of freedom in determining the tasks and structure of administration and adjusting it to current needs.

One of the consequences of determining a new structure of administration is the need to determine the results of the transformations in the sphere of employment relationships. If they result in dismissals of employees, the relevant provisions must take into account applicable constitutional standards. A key standard is laid down in Article 2 of the Constitution of the Republic of Poland; it is the principle of a democratic state ruled by law, 'which since the very beginning of its validity in the Polish legal order, has been treated as a source of subsequent principles of a more detailed nature. One such principle is the protection of an individual's trust in the state and its laws, also called 'the principle of the state loyalty to its citizens'.³¹ Officers of the so-called uniformed services performing public service within the meaning of Article 69 of the Constitution cannot be excluded from the scope of this principle. The implementation of this principle is demonstrated in drafting and passing such legislation that will not become

'a kind of trap for the citizen, and that will enable him to arrange his affairs in the confidence that he is not exposed to legal consequences that he could not foresee at the time of taking decisions and actions, as well as in the belief that his actions undertaken in accordance with applicable law will be also recognised by the legal system in the future. New regulations adopted by the legislator cannot surprise the addressees, who should be given time to adapt to the amended regulations and calmly take decisions on their further conduct.'³²

²⁹ Calame, P., 'Proces reformy w administracji publicznej', in: Czaputowicz, J. (ed.), *Zarządanie zmianą w administracji publicznej materiały z konferencji Warszawa, 16–17 grudnia 2010 r.*, Warszawa, 2012, p. 16.

³⁰ Ibidem, p. 17.

³¹ Florczak-Wątor, M., 'Komentarz do art. 2, t. 4', in: Tuleja P. (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd ed., LEX/el. 2021 [accessed on 7 August 2023].

³² Judgment of the Constitutional Tribunal of 7 February 2001, K 27/00, OTK 2001, No. 2, item 29.

The Constitutional Tribunal states that an individual should be able to determine the consequences of individual conduct and events based on the current legal system, as well as expect that the legislator will not change them arbitrarily.³³

The fact that politics and law are closely related,³⁴ which is obvious in a democratic state ruled by law, is not in itself inappropriate and is part of the nature of democracy. The problem only occurs when law is politicised, i.e., when it is treated as a tool to achieve certain goals regardless of the constitutionally decreed values and goals of the state resulting from the Constitution. The provisions of statutes that constitute in fact a pretext for mass layoffs of officers employed in public administration bodies while transforming their structures, although neither the aims nor the tasks of the dissolved and newly established structures change, are a manifestation of this type of legislative practice. *De lege ferenda*, it is necessary to refrain from creating regulations that introduce solutions consisting in the termination of service relationships in uniformed services at the opportunity of their reorganisation. It should be taken into consideration that the provisions of statutes regulating service relationships in the so-called uniformed services specify measures allowing for effective human resources policy. The normative models applied during the reorganisation of uniformed services not only raise constitutional doubts but also may significantly contribute to the formation of opportunistic and conformist attitudes towards the law among officers. Such attitudes actually preclude the performance of public service with concern for the interests of the state and civil rights and freedoms.

Finally, the scope of personnel changes made in a short period often precludes an objective assessment of an officer's suitability for service in a 'new' institution and may lead to the weakening of the effectiveness of the security administration.

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³³ Judgment of the Constitutional Tribunal of 14 June 2000, P 3/00, OTK 2000, No. 5, item 138.

³⁴ Bator, A., Łakomy, J., 'Pojęciowe uwarunkowania badań nad związkami prawa i polityki', *Acta Universitatis Wratislaviensis*, No. 3994, *Przegląd Prawa i Administracji*, Issue CXXII, Wrocław, 2020, p. 11 et seq.

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