PERIODICAL FINANCIAL BENEFITS FOR FAMILY MEMBERS OF A DECEASED POLICE OFFICER (LEGALLY SUBSTANTIVE ASPECTS)

Family members’ benefits scheme - introductory comments

The scheme of financial benefits, being specific compensations for personal injury such as the death of a police officer which is suffered by members of his or her family, constitutes quite a complicated system of legal solutions whose essence consists of specific provisions, i.e. specifically issued normative acts.

The benefits provided for in the aforementioned specific provisions can be structured according to the two types of criteria.

The first criterion, referring to the nature of the injury suffered, makes it possible to distinguish between one-time benefits and periodical benefits. The latter, as it is not difficult to guess, constitute a kind of compensation for those injuries whose effects are suffered over a period of time, and which requires fixed and repeated benefits (to be provided over a longer or shorter period of time, and quite often permanently).

One-time benefits are regulated by the Act of 4 April 2014 on compensation benefits payable when an accident or illness occurs in connection with the service\(^2\). Their purpose, pursuant to Articles 1–4 and Article 15 of the Accident Compensation Act, is to compensate for the damage to a police officer’s health, property or loss of life, if the aforementioned consequences have been caused either by an accident in connection with the

\(^1\) Prof. Mieczysław Goettel — Academic of the Institute of Legal Sciences at the Police Academy in Szczytno. Author of numerous publications, including monographs, textbooks, articles, glosses and reviews in the field of civil law and police law. His research interests focus on the issues of family law, mainly concerning parental authority and matrimonial property relations, civil law-related aspects of the functioning of the Police, the situation of animals in the light of civil law regulations and the relationship of civil law with tax law and criminal law. Commandant-Rector of the Police Academy in Szczytno in 1990-1997. E-mail: <miegoe@wp.pl>.

\(^2\) Dz.U., 2018, item 148, hereinafter: Accident Compensation Act.
service or an illness arising from specific conditions or properties of the service.3

Until recently, periodical benefits have had their exclusive legal basis included in the provisions of the Act of 18 February 1994 on pensions for officers of the Police, Internal Security Agency, Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, State Protection Service, State Fire Service, Customs Security Service and Prison Service, as well as for their families.4 Periodical benefits being the components of the pensions scheme for police officers and officers of other uniformed services (Article 2(1)(1)(b) and (c) of the Pensions Act) include, among others, disability pension being a compensation for the consequences of a police officer’s disability (being beyond the scope of these considerations, and which is the benefit a living person is eligible to) and survivor’s pension being the benefit which family members of the deceased police officer are eligible to.5

It should be emphasised that the Pensions Act specifies uniform conditions for acquiring the right to the survivor’s pension, regardless of the circumstances in which the death of a police officer occurred. Such a regularity results from the function such benefits serve, which is to ensure proper living conditions when they deteriorate (including those of a property-related nature) and which are caused, among others, by the loss of a close relative (here: police officer) and the income he or she received. Therefore, the benefits under the Pensions Act are payable following the death of a police officer, which occurred not only in connection with activities undertaken to protect public order and safety or any other service-related activities, but also with no connection with such activities. The issue in question needs to be emphasised as the provisions, to be referred to below, make the entitlement to such benefits dependent not only on the fact of the death itself, but also on the nature of the event leading up to the death.

The Pensions Act provides for some exceptions to the aforementioned rule, taking into account, considering the nature of police tasks, an increased risk of loss of life of a police officer in connection with his or her involvement in certain activities undertaken to protect public order and safety. These exceptions are reflected in certain preferential provisions for family members if the death of a police officer occurred in circumstances related to the performance of the abovementioned activities.

However, some opinions have been expressed that the Pensions Act provisions concerning the survivor’s pension do not guarantee, despite the inclusion of the aforementioned preferences in their content, sufficient financial protection for the family members of those police officers who take

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3 See: Goettel M, Wynagradzanie szkód wyrządzonych w związku z działaniami policji w ramach ochrony bezpieczeństwa i porządku publicznego, Szczytno, 2022, p. 131ff.
action to protect public order and safety in conditions threatening their life or health. As a result, by the Act of 8 February 2023 on financial benefits payable to family members of officers or professional soldiers whose death occurred in connection with their service or undertaking off-duty activities to save people’s life, health or property⁶, a new type of periodical benefits has been introduced into the Polish legal order.

Referring to the second criterion, which is of a subjective nature, a distinction is made between the benefits which the two different categories of persons are entitled to. The first category is made up of those directly injured, i.e. police officers, while the second category includes those referred to as indirectly injured, i.e. family members (in a broad sense) of the deceased police officer. For the benefit of the both categories of the injured persons, both directly (police officers) and indirectly (family members), the regulations provide for the right to one-time benefits and the right to periodical benefits. As a result, the abovementioned categories remain complementary to one another.

The aim of this study is to analyse periodical benefits which family members of deceased police officers are entitled to, i.e. indirectly injured persons. The analysis requires a comparison of the norms constituting the subject matter of the two aforementioned normative acts: the Pensions Act and the Act of 8 February 2023. Wherever the term ‘death’ (of a police officer) is used in this paper, one should bear in mind that identical effects (with one exception only) are referred to the provisions to his or her ‘disappearance’ (Article 23(1)(1) of the Pensions Act and Article 2(3) of the Financial Benefits Act). The scope of the considerations has been limited to legally substantive aspects, so the issues related to the proceedings in cases of the analysed benefits have been omitted.

It should be added that the laws discussed here do not fully cover all of the means of property protection for police officers and members of their families as they may use, in the event that the abovementioned special regulations do not provide them with full compensation for the damage suffered, the possibility of pursuing supplementary claims on general principles, i.e. based on the provisions of the Act of 23 April 1964 - Civil Code⁷.

**Benefits under the Pensions Act**

The Pensions Act, as it has been already indicated above, provides the eligible members of the police officer’s family with the right to periodical benefits, referred to as the survivor’s pension (Article 2(1)(1)(c) of the Pensions Act). It should be added that in the scope of legally substantive solutions, the abovementioned normative act does not constitute a complete

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regulation as it refers to other acts, also concerning the survivor’s pension. First and foremost, a significant importance should be attributed to a referral rule contained in article 24 in principio of the Pensions Act, which stipulates that the survivor’s pension is payable (subject to exceptions provided for in this act) according to the rules and in the amount specified in the act of 17 December 1998 on pensions and disability pensions from the Social Insurance Fund.

A general prerequisite for being entitled to the aforementioned benefits is, pursuant to Article 23(1)(1) and (2) of the Pensions Act, the death or disappearance of a police officer if it occurred within the time limit laid down by the law, namely:

a) a police officer’s death occurred:
— either when performing his or her duty
— or within 18 months after his or her dismissal from the service, if that happened as a result of injuries or illnesses arising from the service, or within 3 years after his or her dismissal from the service, if his or her death was the result of an accident connected with the performance of the service or an illness resulting from special properties or conditions of the service;

b) a police officer’s disappearance occurred when performing his or her duty.

Therefore, it can be seen that within the framework of the facts constituting the prerequisite for acquiring the right to the survivor’s pension, there is a preference involving a significant extension (up to 3 years) of the period starting from the date of dismissal from the service, after the expiration of which the death of a police officer entails the loss of the right to the pension. The above preference is valid when the death of a police officer is a consequence of an accident occurring in connection with the performance of the service or an illness arising from special properties or conditions of the service. Interestingly, the Pensions Act, by using the phrases in Article 23(1)(2): ‘an accident in connection with the performance of the service’ and ‘an illness arising from special properties or conditions of the service’, does not itself define them, neither does it contain an expressis verbis reference to the Accident Compensation Act, in the provisions of which (in Articles 3(1) and 4(1)) these phrases have been defined. It has to be assumed that there is a tacit reference to the cited provisions. For the purposes of these provisions, an accident means a sudden event caused by an external cause, resulting in injury or death, which occurred in the course of the enumerated circumstances (Article 3 of the Accident Compensation Act), while an illness is deemed to be an illness caused by an activity of harmful factors occurring in the service environment or that

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8 Dz.U., 2022, item 504 as amended; hereinafter: Social Insurance Fund.
9 This refers to a disappearance which has not resulted in a judicial pronouncement of death. Indeed, such a judgment has the effects of death (Article 31(1) of the civil code).
10 Some interpretation doubts about the relation between an accident and the service have been discussed by Goettel M, Wynagradzanie..., op.cit., pp. 132–133.
included in the list of diseases connected with the performance of the service, as specified in the executive regulations.

Furthermore, if there are additional circumstances accompanying the death of a police officer (as referred to in the subsequent sections of this study), special rules that affect the right to or the size of the pension become applicable.

It is worth mentioning (although this case does not lie within the scope of these deliberations) that the right to the pension is also extended in the event of the death of a retired police officer or a police disability pensioner (Article 23(1)(3) of the Pensions Act).

Except for general prerequisites, the legislator makes the right to the pension dependent on the fulfilment of specific conditions. They are not of a uniform nature, as they are closely related to a specific category of family members who are entitled to the pension, which has been indicated within the framework of the characteristics of those entitled.

However, with regard to the circle of persons entitled to the survivor’s pension, the Pensions Act does not contain independent regulations. Therefore, Articles 67-71 of the Act on Social Insurance Fund apply here, pursuant to the abovementioned reference standards. Referring to their content, it should be assumed that the following family members of police officers are those to whom it concers:

1. Biological children, children of the spouse (stepchildren) and adopted children: either until they reach 16 years of age, or until they complete their school education if they are over 16 years of age, but no longer than until they reach 25 years of age (however, if a child has reached 25 years of age while in the last year of university study, the right to the survivor’s pension is extended until the end of that year of study), or regardless of age, if they have become totally unfit to work and live independently or totally unfit to work during the periods indicated above.

2. Grandchildren, siblings and other children adopted for upbringing and maintenance before reaching the age of majority, excluding children adopted for upbringing and maintenance within the framework of a foster family or family orphanage; if they meet the conditions required for biological children, stepchildren or adopted children (indicated above in point 1), as well as those who:
   — had been adopted for upbringing and maintenance at least one year before the police officer died, unless the death was the result of an accident, and
   — do not have the right to the pension of the deceased parents, and when the parents are alive, if:
     a) they cannot provide for their living, or
     b) the police officer or his or her spouse was their court-appointed guardian.

3. Widowed spouse, with the right to the disability pension when:
   — at the time of the police officer’s death had reached the age of 50 or was unfit to work, or
— is bringing up at least one of the children, grandchildren or siblings eligible to the survivor’s pension of the deceased spouse, who has not reached the age of 16 and, if at school age, has reached the age of 18, or if the person is taking care of a child who is totally unfit to work and live independently or who is totally unfit to work and entitled to the survivor’s pension, or
— has reached the age of 50 or has become unfit to work after the death of his or her spouse (police officer), but no later than within 5 years of his or her death or of ceasing to bring up persons whose upbringing (which includes custody) entitles him or her to the survivor’s pension.

It should be added that, as a rule, the right of the spouse depends on whether he or she remains in conjugal community with the spouse at the time of his or her death. Exceptionally, the spouse who does not remain in conjugal community, or is divorced, is entitled to the survivor’s pension if, in addition to fulfilling the abovementioned conditions, he or she has been ordered by court judgment or judicial settlement the right to the spousal maintenance on the day of the spouse’s death.

The legislator has also regulated the situation of the spouse who does not meet the abovementioned conditions for the survivor’s pension and does not have the necessary sources of income. Such a spouse retains the right to the survivor’s pension:
— for a period of one year from the death of the spouse,
— during the period of attending an organised training course aimed at obtaining qualifications for gainful employment, but no longer than for 2 years after the death of the spouse.

4. Parents, with stepfather and stepmother and adoptees being treated equally as well. These persons are entitled to the survivor’s pension if:
— a police officer immediately before his or her death contributed to their maintenance,
— meet the conditions laid down for a widowed spouse, respectively.

It should be added that the Pensions Act also contains a solution (in Article 8) to make the survivor’s pension an exceptional benefit. Namely, family members of the deceased police officer, who do not acquire the right to the pension due to special circumstances, may, on an exceptional basis, be granted this benefit by the Minister of Internal Affairs, but in the amount not exceeding the extent provided for in the law.

11 In accordance with the position of the judicature (e.g. judgement of the Supreme Court of 6 March 1997, ref. II UKN 17/97, LEX No. 30571) and the doctrine (e.g. Babińska-Gołecka R, Bartnicki M [in:] K. Antonów (Ed.), Komentarz do ustawy o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych [w:] Emerytury i renty z FUS. Emerytury pomostowe. Okresowe emerytury kapitałowe. Komentarz do trzech ustaw emerytalnych, LEX/el 2019, thesis No. 2.2, Article 70) it refers to the spouses remaining in a real relationship, which includes living together and running a common household, living together, helping each other and working together for the good of the family.

12 This solution is present both in the general social security system and separate insurance and benefits schemes — See: Szustakiewicz P, Świadczenia wyjątkowe z zakresu ubezpieczeń społecznych, Radca Prawny, 2007, No. 3, p. 61ff.
As far as the calculation of the amount of the survivor’s pension is concerned, the Pensions Act is essentially limited to the assessment basis being indicated, when assuming as the basis, pursuant to Article 24 (1) of the Pensions Act, the amount of the 1st group disability pension that the police officer would have been entitled to on the day of his or her death or disappearance, without the carer’s allowance. In turn, the amount of the 1st group disability pension, Article 22 (1) (1) of the Pensions Act sets the amount of the 1st group disability pension at 80% of the assessment basis of the pension or disability pension\textsuperscript{13}, pointing out that such a pension is increased by 10% of the assessment basis if the disability resulted from an accident connected with the service or from an illness caused in connection with special properties or conditions of the service, in respect of which compensation benefits are payable (Article 22 paragraph 2 of the Pensions Act). As regards the detailed criteria for calculating the amount of benefits which are payable to the eligible family members, in the absence of relevant regulations under the Pensions Act, a reference should be made to the relevant provisions of the Pensions Act and Disability Pensions Act from the Social Insurance Fund. The rules applicable in this respect are contained in Articles 73 and 74 of the Social Insurance Fund Act. Using the cited provisions, the amount of the survivor’s pension is specified in the following (indicated as a percentage) assessment basis:

1) for one entitled person — 85%,
2) for two entitled persons — 90%,
3) for three or more entitled persons — 95%.

Several eligible persons are jointly entitled to one survivor’s pension, equally divided.

The Pensions Act also provides for several preferential solutions, introducing more favourable rules for determining the amount of the survivor’s pension and even for the right to acquire or retain the pension in full.

Firstly, a spouse is entitled to the pension regardless of his or her age and health condition if:

— the death or disappearance of a police officer (irrespective of the circumstances) occurred while serving in a police contingent deployed to carry out statutory tasks\textsuperscript{14} (Article 24(1a)(a) of the Pensions Act)
— the death of a police officer (which does not refer to his or her disappearance) occurred in connection with the service as a result of a criminal act (Article 24(5), second sentence of the Pensions Act).

Secondly, with regard to a family member of the police officer whose death occurred in connection with the service as a result of a criminal act, the mechanism of suspending or reducing the pension in the event of

\textsuperscript{13} The method of calculating the basis of the pension or disability pension is governed by Article 5 of the Pensions Act, according to which there is a rule that the pension is equal to the remuneration payable to a police officer in his or her last occupied position.

\textsuperscript{14} Those are tasks performed, pursuant to Article 1(2)(7) and (3) of the Act of 6 April 1990 on the Police (Dz.U., 2023, item 171 as amended); hereinafter: Police Act, on the basis of EU law or on the basis of international agreements or arrangements, including in the form of cooperation with certain EU or international entities, within the police contingent referred to in Article 145aff of the Police Act.
earning income from an activity subject to compulsory social insurance does not apply (Article 24(5), second sentence of the Pensions Act).

Thirdly, a family member of the police officer whose death or disappearance occurred on duty, but only if the events occurred while serving in a police contingent, is entitled to the family pension in the amount of the officer’s pension\(^\text{15}\) (Article 24(7) of the Pensions Act).

Finally, it should be mentioned that family members are also entitled, under the rules set out in separate regulations, to the carer’s allowance, orphan allowance, as well as to other allowances and financial benefits and allowances (Article 25 of the Pensions Act).

**Benefits provided for by the Act of 8 February 2023**

The benefits regulated by this law do not belong to the pensions scheme of the uniformed services. Although they bear some similarity to survivor’s pensions, the legislator classifies them as a separate type of financial compensation in the event of the death (or disappearance) of a police officer, giving them the name ‘financial benefits’.

The idea behind this type of compensation is to give far-reaching legal protection to the family members of those police officers who died while performing their duties and, at the same time, acting under conditions threatening their life or health\(^\text{16}\). Such protection includes financial resources to be provided for eligible persons under exceptionally preferential conditions.

A reference to the above idea can be seen in the content of the regulations defining the prerequisites of the right to financial benefits. It applies in the event of the death of a police officer in connection with:

— the performance of police duties in conditions threatening life and health (Article 2(1)(1) of the Act), whereby the cited provision specifies (in subsections marked with letters from a to h) which activities of police officers are referred to, and those are as follows:

a) covert or investigative activities as well as police response to protect life and property, restore public order and safety, and save life or health
b) physical protection of persons and property,
c) rescue operations,
d) activities related to the direct protection of detainees,
e) combat and counterterrorist operations\(^\text{17}\),
f) activities related to the protection of the state border, control of border traffic, prevention and control of illegal immigration,

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\(^{15}\) According to Article 3 (1) (8) of the Police Act, the term remuneration should be understood as basic remuneration together with fixed allowances and an annual bonus, payable to an officer pursuant to the provisions on officers’ remuneration and bonuses (regulated in Article 99ff of the Police Act).

\(^{16}\) It is clearly highlighted in the explanatory memorandum of the bill - Tenth Chamber of Parliament, parliamentary print No. 2951.

\(^{17}\) Those are activities within the meaning of Article 2(2) of the Act of 10 June 2016 on anti-terrorist activities, (Dz.U., 2022, item 2632).
g) underwater operations related to the maintenance of public order and safety,
h) flying personnel activities;
— performance of off-duty activities related to the protection of public order and safety or other activities related to the protection of life and property involving any risk taken to save one’s life or health (Article 2(1)(2) of the Financial Benefits Act)
— serving in the area of military operations or in the area of armed conflicts abroad, among others in the police force (Article 2(1)(3) of the Financial Benefits Act)
— carrying out duties, other than those mentioned in paragraph 1, under conditions posing threat to life and health (Article 2(2) of the Financial Benefits Act).

The content of the above discussed regulations, not being the best model of efficient legislation though, requires some further comments.

First of all, an attempt to enumerate in a casuistic manner (on a numerus clausus basis) the activities whose performance may involve the occurrence of conditions threatening life or health seems to be risky, as it is easy to ignore some situations which such criteria correspond to. However, it must be added that the legislator has provided for an appropriate ‘buffer’ by including in the catalogue of prerequisites also the term ‘performance of other duties’, that is, in fact, performance of any duties. Theoretically, it would therefore be possible to end up with an (appropriately formulated) prerequisite contained in Article 2(2) of the Financial Benefits Act. However, this kind of a casuistic approach can be explained by the desire to indicate the most typical situations characterised by potential threats to life or health.

The content of the prerequisite, specified in Article 2(1)(3) of the Financial Benefits Act, does not include (in contrast to other prerequisites) a requirement that conditions threatening life or health must exist. Apparently, the legislator has assumed that the performance of official tasks in the area of military operations or in the area of armed conflicts implies per se the existence of such conditions.

On the other hand, the prerequisite contained in the content of Article 2(1)(2) of the Act should be interpreted considering a specific nature of service provided by the police. When strictly understood as ‘performance of off-duty activities related to the protection of (broadly understood) public safety and order’, the term also refers to officers of other uniformed services. They have no legal obligation, and often no right, to undertake such off-duty activities, i.e. at non-working hours. In this respect, the situation of police officers is unique. In principle, any threat to public safety and order as well as to human life, health or property makes police officers obliged to respond appropriately (even if only by calling for specialist units), even if such an emergency happens at off-duty hours.

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18 This is pointed out in the bill - Tenth Chamber of Parliament, parliamentary print No. 2951.
(at non-working hours). When taking action to respond to such threats, police officers perform their police duties.

By contrast, significant difficulties may arise in the interpretation of the two phrases: ‘in conditions threatening life and health’ and ‘resulting in the risk to life or health’. These are typical vague phrases, which may lead to different assessments of similar situations. It should be added that it is the duty of a police officer to take action under such conditions, as indicated by the fragment of the text of the oath rota contained in Article 27(1) of the Police Act, which says: ‘[...] I swear [...] to protect the legal order established by the Constitution of the Republic of Poland, to guard the security of the State and its citizens, even at the risk of my life’. It will therefore be the responsibility of the authority deciding on the question of entitlement to particular benefits to make a thorough assessment of whether, in a specific case of loss of life by a police officer, there has been any condition endangering his or her life or health.

A group of persons entitled to financial benefits includes, pursuant to Article 3(1) (5) of the Financial Benefits Act, the following family members of a police officer:
— his or her spouse;
— children, who are considered to be: biological children, spouse’s children (stepchildren), adopted children and children adopted for upbringing and maintenance before reaching the age of majority, grandchildren, siblings and other children, with the exception of children adopted for upbringing and maintenance within a foster family or a family orphanage, if they fulfil the following conditions:
  a) have not reached the age of 18 or, if attending a school, 24, or 25 if studying at a higher education institution and reaching the age of 24 in the final or penultimate year of study, or
  b) became totally unfit to work and unable to live independently before the age specified in point a;
— parents, also including adopters if they comply with the following conditions:
  a) have acquired the right to the pension or disability pension, or remuneration for retired officers, or family allowance provided for under separate provisions, or
  b) have reached the age of 60 for women and 65 for men, or
  c) became totally unfit to work and unable to live independently before reaching the age specified in point b.

Interestingly, the laws do not impose any additional requirements on widowed spouses.

The amount of the financial benefit varies depending on the person of the beneficiary family member (Article 4(1) of the Financial Benefits Act), which is as follows:
— 100% of the average police officer’s remuneration - if the benefit is granted to a spouse or a child without both parents (being an orphan),

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— 50% of the remuneration referred to the abovementioned - if the benefit is payable to each of the other beneficiaries.

It should be emphasised that under the Act in question, each of the eligible persons is entitled to the benefit in full. Therefore, the mechanism of joint entitlement of one benefit to several entitled persons and its division into equal parts is not applicable here.

At the same time, the Article 4(2) of the Financial Benefits Act specifies that the average remuneration of a police officer is to be understood, as in force on 31 December of the year preceding the date of submitting the application for the financial benefit, the average remuneration referred to in Article 99(3) of the Police Act\(^{20}\).

It should be added that the financial benefit, pursuant to Article 7 of the Act, can be enlarged by:

— carer’s allowance and orphan allowance according to the rules and in the amount specified in the Act on Pensions and Disability Pensions from the Social Insurance Fund,

— other allowances other than those mentioned above and allowances and financial benefits, insofar as they have been granted on the basis of separate provisions.

Confluence of the entitlement to the benefits under the Pensions Act and the Act of 8 February 2023

The comparison of the norms of the two acts shows that family members of the deceased police officer can fulfil the statutory conditions to receive:

— either the survivor’s pension only,

— or the financial benefit only,

— or the both of the above financial compensations\(^{21}\).

The first two conditions are transparent, as the right holder is not required to choose. However, the third condition involves a confluence of the rights. The legislator solves the problem of the confluence, as a rule, by granting the beneficiary a higher benefit or the right to choose the type of benefit, which is a typical procedure in insurance or remuneration schemes.

In practice, eligible family members are most often entitled to the survivor’s pension, owing to a broad interpretation of the prerequisites for this right. This right (when specific conditions have been met by a particular group of eligible persons) in each case of death (or disappearance) of a police officer in the course of his or her service (sometimes even at a time specified by the law, after the termination of the service), regardless

\(^{20}\) This provision stipulates that the average remuneration of a police officer is a multiple of the base amount, the amount of which, specified in separate rules, is determined by the Budget Act, adding in Article 99(3a) that the average remuneration also includes the monthly equivalent of the annual bonus.

\(^{21}\) Other configurations are, of course, also possible, e.g. where the beneficiary, exercising his or her right of choice, has opted for a benefit of a different type than the survivor’s pension (from the police scheme).
of the existence of any connection between the police officer’s death (or disappearance) and the performance of his or her police duties. The latter circumstance, however, allows the beneficiary to benefit from preferential solutions, inter alia, with regard to the amount of the disability pension.

On the other hand, the financial benefit is payable to the entitled family member much less frequently, as its entitlement is subject to the two essential conditions related to the fact of the death or disappearance:
— such incidents must be related to the performance of service duties,
— such incidents must have occurred under life-threatening or health-threatening conditions.

It is therefore possible that there are cases where the occurrence of the prerequisites for the right to the financial benefit involves, at the same time, the right to the survivor’s pension. The majority of such facts shall fall within the disposition of Article 6(1) of the Financial Benefits Act stating that ‘in the case of concurrence of the right to the financial benefit with the right to the pension or disability pension or remuneration for retired officers or family remuneration provided for in separate regulations, the higher benefit or the benefit chosen by the entitled person shall be paid, unless specific provisions provide otherwise’. This provision partly corresponds to Article 7(1) of the Pensions Act, which provides that ‘if there is a coincidence of the right to the pension or disability pension provided for in the act with the right to:
1) the pension or disability pension as provided for in separate regulations, or
2) the remuneration for retired officers or family remuneration as provided for in separate regulations, or
3) the financial benefit referred to in the Act of 8 February 2023 on financial benefits to be paid to family members of officers or soldiers whose death occurred in connection with the service or undertaking non-service-related activities to save life, health or property (Journal of Laws, item 658) - the higher benefit or the benefit chosen by the eligible person shall be paid, if specific provisions do not provide otherwise.

In most cases, taking into account (as presented above) the rules for calculating the amount of both financial compensations - the amount of the financial benefit will be higher than the amount of the survivor’s pension. This applies in particular to the spouse and the child who is an orphan, for whom the amount of the financial benefit is equal to the amount of the average police officer’s remuneration. However, there may be a different situation, for example, in a situation where the spouse (as the only eligible person) fulfils the conditions for obtaining a preferential survivor’s pension pursuant to Article 24(7) of the Pensions Act, i.e. in the case of death or disappearance during and in connection with the service in a police contingent (the disability pension is then equal to the amount of the remuneration).

Exceptionally, the necessity to make a choice does not apply in the situation provided for in Article 6(2) of the Financial Benefits Act. This provision introduces a favourable solution for the parents of a police officer by
providing for the cumulative entitlement of concurrent financial compensations. Thus, if a parent has acquired the right to the financial benefit and, at the same time, is entitled, as provided for in separate regulations, to either the pension or disability pension, or to the remuneration for retired officers, or the family remuneration excluding the survivor’s pension or family remuneration of the same deceased officer as the financial benefit, both the financial benefit and the other benefit shall be paid to the entitled person.

Conclusions

The above analysis demonstrates that the system of property protection for the family members of the deceased police officer consists of two pillars. The core of one pillar is the survivor’s pension, which is a component of the pension. This type of compensation (referred to in some cases by a different name than the survivor’s pension\(^\text{22}\)) is a common element of the legal order, referring to all employment relationships. The entitlement to the survivor’s pension is determined by the fact of the death of a police officer, of course, with the need to meet specific conditions, differentiated according to the category of the eligible persons (family members of the police officer).

Considering a specific nature of the police service (also that of the armed forces and other uniformed formations), the above system of property protection has been expanded by another pillar - the Act of 8 February 2023 on financial benefits for family members of officers or professional soldiers whose death occurred in connection with the service or off-duty activities when saving human life, health or property. The title of this normative act does not fully reflect its guiding motive (ratio legis). Only examining its provisions makes it clear that it is the protection of the relatives of a police officer who loses his or her life, acting, in the interest of the service, ‘in conditions threatening life or health’

This is a new regulation, so only time will show its practical significance and possible difficulties in its application. As signalled in the body of the study, interpretation difficulties may arise against the background of the formula quoted above. Will practice take a rigorous approach for the formula to be understood? Will it be considered as an axiom that the death of a police officer which occurs in connection with his or her service, as a rule, happens in conditions which pose a threat to their life or health? In any case, the very idea of the new regulation should be approved by those concerned.

References


\(^{22}\) For example, in the pensions system for judges (similarly for prosecutors), it is - pursuant to Article 102(l) of the Act of 27 July 2001- Law on the System of Common Courts (Dz.U., 2023, item 217 as amended) – ‘family remuneration’.
6. Ustawa z 10 czerwca 2016 r. o działaniach antyterrorystycznych, (Dz.U., 2022, item 2632).
7. Ustawa z 17 grudnia 1998 r. o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych (Dz.U., 2022, item 504 as amended).
11. Ustawa z 4 kwietnia 2014 r. o świadczeniach odszkodowawczych przysługujących w razie wypadku lub choroby pozostających w związku ze służbą (Dz.U., 2018, item 148).
13. Ustawa z 8 lutego 2023 r. o świadczeniu pieniężnym przysługującym członkom rodziny funkcjonariuszy lub żołnierzy zawodowych, których śmierć nastąpiła w związku ze służbą albo podjęciem poza służbą czynności ratowania życia lub zdrowia ludzkiego albo mienia (Dz.U., 2023, item 658).
15. Wyrok SN z 6 marca 1997 r., sygn. II UKN 17/97, LEX, No. 30571.

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**Keywords:** police officer’s death, police officer’s family members, survivor’s pension, financial benefits

**Summary:** The death of a police officer entitles members of his or her family to financial compensation under the conditions laid down by the law, with survivor’s pension as a principal type of this compensation. If the death of a police officer occurred in connection with the performance of his or her duties, the survivor’s pension is payable to his or her family members based on more favourable conditions. A recently enacted law of 8 February 2023 introduced a new type of compensation, called a ‘financial benefit’, to which family members are entitled when a police officer deceases while performing duties in conditions threatening his or her life or health.

**Paliarbas clave:** fallecimiento de un funcionario de policía, familiares de un funcionario de policía, pensión de supervivencia, prestación económica

**Resumen:** El fallecimiento de un funcionario de policía da derecho a los miembros de su familia a recibir una compensación financiera, siempre que se cumplan las condiciones establecidas por la ley. Un tipo esencial de dicha compensación es la pensión de supervivencia. Si la muerte de un funcionario de policía estaba relacionada con el ejercicio de sus funciones oficiales, los familiares pueden recibir la pensión en condiciones más favorables. En virtud de una ley recientemente promulgada (8 de febrero de 2023), se ha introducido un nuevo tipo de compensación, conocida como “prestación monetaria”, a la que tienen derecho los familiares de un funcionario de policía fallecido durante el ejercicio de sus funciones en condiciones que pongan en peligro su vida o su salud.