THE PROTECTIVE NATURE OF THE INSTITUTION OF SUSPENDING A POLICE OFFICER FROM OFFICIAL DUTIES

Introduction

A service relationship is a special legal relationship that connects persons employed in the state apparatus, and therefore holding a public office permanently and for remuneration, with the state. It should be noted that the legislator divided service relations into two types, i.e. service relations under the labour law and service relations of uniformed services officers and professional soldiers regulated by the provisions of administrative law (also called service relations in militarised formations). The legal relationship under which a police officer performs the tasks entrusted to him or her by the state is therefore an administrative relationship. Performing official duties resulting from the content of the administrative and legal relationship between a police officer and the state is the officer’s obligation, and its violation is subject to disciplinary liability. The Police Act, however, provides for
an institution that allows a police officer to be prohibited from performing official duties resulting from the service relationship for a specified period. This institution is the suspension of a police officer from official duties.\(^8\)

The analysis carried out in this publication serves to verify the hypothesis that the institution of suspending a police officer from official duties is a very important element of the administrative and legal protection of all police officers in Poland. This verification was carried out using the dogmatic-legal method, consisting in examining applicable sources of law, literature and court decisions regarding the suspension of a police officer from official duties.

**Grounds for suspending a police officer from official duties**

The Police Act provides for two types of suspension of a police officer from official duties, *i.e.* mandatory suspension (Article 39, Section 1) and optional suspension (Article 39, Sections 2 and 2a). Pursuant to Art. 39 Section 1 of the Act on the Police, a police officer is suspended from official duties in the event of initiation of criminal proceedings against him or her in the case of a crime or a fiscal offence, which is intentional and prosecuted by public prosecution, for a period not longer than 3 months. If there are grounds for mandatory suspension, the police officer’s superior is obliged to suspend them and is prohibited from making a different decision.\(^9\)

Initiating criminal proceedings against a police officer is a phase of the proceedings that is conducted against a person (in personam phase). The Provincial Administrative Court in Gdańsk stated that this phase begins with the issuance of the decision to present charges, and the issuance of the decision means preparing and announcing the decision and interrogating the suspected police officer.\(^10\) A different position in this respect was taken by the Supreme Administrative Court, which emphasised that it is permissible for criminal proceedings to move from the in rem phase to the in personam phase in a situation in which a decision has been made to bring charges against a specific person, even if it has not been announced and has not been heard. suspected immediately after its preparation. Criminal proceedings against a person may therefore be initiated when such a decision has been prepared but not yet issued.\(^11\) The Supreme Administrative Court also rightly pointed out that the transposition of regulations relating to criminal proceedings in the process of interpreting the provisions of the Police Act must take place primarily taking into account the specificity of police service, as well as the purpose of suspending a police officer in official activities. When issuing a decision to suspend a police officer from official duties, the Police authorities are

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8 Będziejewska-Michalska M, Zawieszenie... (cz.1), op. cit., p. 44.
9 Wyrok NSA z 16 kwietnia 2021, ref. III OSK 142/21, LEX No. 3243315; Wyrok WSA w Poznaniu z 19 grudnia 2013, ref. IV SA/Po 522/13, LEX No. 1418245.
10 Wyrok WSA w Gdańsku z 2 kwietnia 2014, ref. III SA/Gd 60/14, LEX No. 1471579.
11 Wyrok NSA z 10 listopada 2017, ref. I OSK 70/16, LEX No. 2422966.
not obliged to examine the correctness and procedural effectiveness of the activities undertaken by another entity appointed to implement them. Therefore, if the superior received information from the prosecutor about the initiation of an investigation against a police officer, and a copy of the decision to present charges was attached to the prosecutor’s letter, there are no grounds to question the existence of the conditions under Art. 39 Section 1 of the Police Act.\(^\text{12}\)

It should therefore be noted that the suspension of a police officer in the performance of his or her official duties depends on the very fact of bringing charges in criminal proceedings, and not on the finding of the police officer’s guilt regarding the committed act.\(^\text{13}\)

It is important that Art. 39 Section 1 of the Police Act applies only to crimes and fiscal offences prosecuted by public prosecution and covered by intent. The Act of June 6, 1997 – Code of Criminal Procedure\(^\text{14}\) provides for two modes of initiating criminal proceedings, \textit{i.e.} by public prosecution (ex officio) and by private prosecution. Prosecution by public prosecution may be unconditional or conditional. In the latter case, the Act makes prosecution dependent on the request of a specific person, institution or body (Article 9 § 1, Article 12 of the Code of Criminal Procedure) or on the authorisation of the authorities (Article 9 § 1, Article 13 of the Code of Criminal Procedure). The Code of Criminal Procedure does not contain provisions specifying the procedure for prosecuting specific crimes. This is determined by the provisions of substantive criminal law.\(^\text{15}\)

Therefore, the principle is to prosecute crimes and their perpetrators by public prosecution, \textit{i.e.} by public authorities equipped with appropriate legal instruments for this purpose. However, the exception to this rule is the indication in a provision of substantive criminal law that a given act is prosecuted by private prosecution.\(^\text{16}\)

The essence of intentionality is the intention to commit a prohibited act. The perpetrator must be aware and willing to implement the features of a prohibited act through his or her behaviour (action or omission). Art. 9 § 1 of the Penal Code\(^\text{17}\) distinguishes two types of intention, \textit{i.e.} direct and eventual intention. Direct intention means that the perpetrator wants to commit a prohibited act. In the case of a possible intention, the perpetrator neither wants nor wants to commit a prohibited act, but anticipating the possibility of committing it, agrees to it, and therefore accepts the state of affairs that may occur.\(^\text{18}\)

\(^{12}\) Wyrok NSA z 17 lipca 2018, ref. I OSK 1913/16, LEX No. 2564783.
\(^{13}\) Wyrok NSA z 16 kwietnia 2021, ref. III OSK 142/21, LEX No. 3243315.
\(^{14}\) Ustawa z 6 czerwca 1997 - Kodeks postępowania karnego (consolidated text, DzU, 2022, item 1375); hereinafter referred to as: Code of Criminal Procedure.
\(^{16}\) Będziejewska-Michalska M, Zawieszenie...[cz.1], op. cit., p. 45.
\(^{17}\) Ustawa z 6 czerwca 1997 - Kodeks karny (consolidated text, DzU, 2022, item 1138 as amended); hereinafter referred to as: Penal Code.
It should be remembered that when deciding to suspend a police officer pursuant to Art. 39 Section 1 of the Police Act, are bound by the formal legal classification of the act presented by the prosecutor when initiating criminal proceedings against the police officer. Only the fact of initiating criminal proceedings against a police officer in a case of an intentional crime, prosecuted by public prosecution, is important when applying Art. 39 Section 1 of the Police Act. The fact that the court competent to hear the criminal case is not bound by the legal classification of the act adopted by the prosecutor, and the possibility of changing this qualification in the course of court proceedings are of no importance.¹⁹

The grounds for optional suspension of a police officer from official duties are specified in Art. 39 Sections 2 and 2a of the Police Act. They are as follows:
1) initiation of criminal proceedings against the police officer in the case of a crime or fiscal offence, unintentional, prosecuted by public prosecution or disciplinary proceedings, if it is intentional for the good of the proceedings or the good of the service (Article 39(2));
2) filing a subsidiary indictment against the police officer, referred to in Art. 55 § 1 of the Code of Criminal Procedure, if it is purposeful for the good of the proceedings or the good of the service (Article 39(2a)).

In Art. 9 § 2 of the Penal Code, two forms of unintentionality have been distinguished, i.e. recklessness and carelessness. Unintentionality occurs when the perpetrator, having no intention of committing a prohibited act, commits one as a result of failing to exercise the caution required in the given circumstances, even though he or she anticipated the possibility of committing such an act (recklessness), and when the perpetrator commits the act while failing to exercise the caution required in the given circumstances, but the act could have been foreseen (negligence).²⁰

Therefore, a police officer may be suspended from official duties if it is purposeful due to the good of the proceedings conducted against him or her (both criminal and disciplinary).²¹ It is worth mentioning that disciplinary proceedings are initiated on the date of issuance of the decision to initiate disciplinary proceedings. A police officer in respect of whom such a decision has been issued is deemed to be the accused (Article 134i(5) of the Police Act). When assessing the advisability of suspension for the good of the proceedings, it should be taken into account in particular whether there is a possibility for the police officer to influence the testimony of witnesses, even if only through daily contact with them at the place of duty, and to disclose to the police officer the directions of evidentiary activities carried out in a given proceeding. The determination of the premise in question will therefore depend on the realities of a specific case, and above all on the charges brought against the officer, the type

¹⁹ Wyrok NSA z 7 lipca 2016, ref. I OSK 1429/15, LEX No. 2100522.
²¹ Wyrok WSA w Białymstoku z 17 grudnia 2019, ref. II SA/Bk 488/19, LEX No. 2759880.
of official tasks, the position held, the state of the case and acting together with other people.\textsuperscript{22}

However, what deserves attention is the premise that the suspension is appropriate for the good of the service. The Police Act does not contain a definition of ‘good of the service’. This is the same value as that found in Art. 41 Section 2 point 5 of the Police Act and determines dismissal from service, but named differently. It should be assumed that the concepts of ‘good of the service’ (Article 39(2) of the Police Act) and ‘important interest of the service’ (Article 41(2)(5) of the Police Act) have a common denominator, and therefore are or at least can be identical concepts. The same events may therefore violate the good of the service and its important interests. The relationship between Art. 39 Section 2a and Art. 41 Section 2 point 5 of the Police Act does not involve mutual exclusion. The good of the service should be seen primarily as a justified concern about the proper performance of official duties by a police officer. The superior deciding to suspend the police officer on the basis of Art. 39 Sections 2 and 2a of the Police Act is therefore obliged to analyse whether the type of charges will allow the Police officer to properly perform his or her official duties.\textsuperscript{23} They should also take into account that the concept of ‘good of the service’ includes specific goods, \textit{i.e.} the good of the Police, citizens’ trust in the Police authorities, guarantees of law-abiding operation, and the independence of the Police from external influences. It should also be noted that an officer who is subject to disciplinary proceedings, let alone criminal proceedings, loses his or her impeccable reputation and thus undermines trust in the Police authorities. However, in accordance with Art. 25 Section 1 of the Police Act, only a person of impeccable reputation may serve in the Police.\textsuperscript{24} Therefore, the commission of a crime or disciplinary offence by a police officer, even if unintentionally, poses a threat to the good of the Police service. A police officer who is suspected of committing them not only worsens the image of the Police, but above all exposes this service to further damage resulting from the gross violation of the high requirements set for public officials. Such consequences should be counteracted by the police officer’s superior by suspending the officer from official duties.\textsuperscript{25}

An order to suspend an officer from official duties issued pursuant to Art. 39 Sections 2 and 2a of the Police Act is discretionary; its issuance was left by the legislator to the discretion of the superior.\textsuperscript{26} The discretionary nature of this decision means that it remains under the control of the court, but the scope of this control is limited. The administrative court can only examine the compliance of the decision with the law, not the

\textsuperscript{22} Bedziejewska-Michalska M, Zawieszenie w czynnościach służbowych (cz. 2), \textit{Policja} 997 2019, No. 12, p. 41.
\textsuperscript{23} Ibid., p. 40; Kresiński M, \textit{op. cit.}, p. 253.
\textsuperscript{24} Wyrok WSA w Gorzowie Wielkopolskim z 14 marca 2018, ref. II SA/Go 1090/17, LEX No. 2470909.
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advisability of taking it. Judicial review of such a decision consists in determining whether its issuance was permissible under applicable legal provisions, whether the limits of administrative discretion were not exceeded, and whether the decision was justified by sufficiently individualised premises, so the authority could not be accused of discretion. Issuing a discretionary decision must be within the limits provided for in Art. 7 k.p.a. Therefore, the authority is obliged to strive to clarify the objective truth and settle the matter taking into account the social interest and the legitimate interest of the citizen. The authority is therefore obliged to conduct a thorough analysis of the facts in a specific case, and its decision requires proper justification. He or she must also remember that the scope of each administrative discretion is determined by the provisions of substantive law and the purpose for which a given regulation was created. However, the choice of decision, made on the basis of the criteria of fairness and expediency, always remains beyond the limits of judicial control. 27

The Supreme Administrative Court drew attention to the specific nature of the conditions in question, stating that the suspension of a police officer from official duties means that despite the charges against the police officer, he or she is not dismissed before a final decision by the competent authorities in separate criminal or disciplinary proceedings, whether he or she is actually guilty of committing a crime or violating discipline. The essence of this institution is its protective nature. Suspension of a police officer from official duties therefore allows the officer to remain in service despite criminal or disciplinary charges against them. 28 This institution also serves to quickly remove a police officer from the current performance of the tasks of police authorities, in case it is determined that he or she no longer meets the requirements for police officers, adopting a reprehensible attitude towards the applicable law, which justifies his or her exclusion from the organisational framework of the public service. 29

Period of suspension of a police officer from official duties

The period of mandatory suspension from official duties cannot be longer than 3 months (Article 39(1) of the Police Act). Optional suspension from official duties, however, may not exceed 12 months (Article 39(2) of the Police Act). In particularly justified cases, a suspension period from official duties may be extended until the completion of criminal proceedings (Article 39(3) of the Police Act). This applies to both mandatory and

27 Wyrok WSA w Łodzi z 29 maja 2018, ref. III SA/Ld 288/18, LEX No. 2505181; Wyrok WSA w Szczecinie z 28 września 2017, ref. II SA/Sz 908/17, LEX No. 2389873; Wyrok WSA w Lublinie z 1 sierpnia 2017, ref. II SA/Lu 274/17, LEX No. 2391766; Wyrok WSA w Warszawie z 18 maja 2016, ref. II SA/Wa 1479/15, LEX No. 2113490; Wyrok WSA w Warszawie z 2 kwietnia 2007, ref. II SA/Wa 28/07, LEX No. 338205. See also: Wyrok NSA z 2 września 2016, ref. I OSK 1096/15, LEX No. 2118709.

28 Wyrok NSA z 12 lutego 2016, ref. I OSK 2032/14, LEX No. 2036012; Kresiński M, op. cit., p. 252.

optional suspensions, and the decision in this regard is discretionary\textsuperscript{30} for a superior authorised to issue a personnel order. Therefore, the suspension of a police officer from official duties depends on whether circumstances have occurred in relation to this officer for it to be considered a particularly justified case.\textsuperscript{31} If preparatory proceedings are still pending against the police officer, the statutory specificity of the case justifying the extension of suspension from official duties should be seen primarily in the content of the decision to bring charges against him or her. It is not the mere fact of criminal proceedings pending against a police officer, but the nature of the charges presented in such a decision that may justify extending the suspension of the police officer from official duties.\textsuperscript{32} Often, the nature of the charge brought against an officer in criminal proceedings has a particularly negative impact on the good name of the Police. In such a case, the interest of the service prevails over the interest of the officer as a party to the administrative proceedings (Article 7 of the Code of Administrative Procedure), which justifies extending the period of suspension of the police officer from official duties.\textsuperscript{33} It is worth emphasising, however, that the Police Act provides for the possibility of dismissing a Police officer from service after 12 months of suspension from official duties, if the reasons for suspension have not ceased (Article 41(2)(9) of the Police Act).

In this respect, the judgement of the Supreme Administrative Court deserves special attention, in which it was rightly stated that, depending on the expected course of the criminal proceedings, postponed pursuant to Art. 39 paragraph 1 of the Police Act, an officer may be suspended several times, but the total suspension period may not exceed three months. Therefore, the superior may, depending on the progress of the criminal proceedings, decide on the duration and advisability of further suspension.\textsuperscript{34}

\textbf{Superiors competent to suspend police officers from official duties}

Art. 39a Section 1 of the Police Act specifies a detailed catalogue of superiors competent to suspend police officers from their duties. This provision indicates which superior is competent to issue personnel orders on the suspension from their duties of police officers in specific positions. In particularly justified cases, the Chief Commander of the Police may also suspend police officers from their official duties whom he or she is not competent to suspend under Art. 39a Section 1 of the Police Act, with the exception of the commander of the Police Internal Affairs Bureau and his or her deputy (Article 39a(2) of the Police Act). The period of suspension

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\item \textsuperscript{30} Michałek A, Art. 39 [in:] Czebotar Ł, et al., op. cit., p. 413; Wyrok WSA w Gorzowie Wielkopolskim z 17 marca 2010, ref. II SA/Go 73/10, LEX No. 606628.
\item \textsuperscript{31} Wyrok WSA w Warszawie z 15 listopada 2013, ref. II SA/Wa 653/13, LEX No. 1407345.
\item \textsuperscript{32} Wyrok NSA z 7 marca 2013, ref. I OSK 1376/12, LEX No. 1339583.
\item \textsuperscript{33} Wyrok WSA w Warszawie z 10 października 2011, ref. II SA/Wa 1202/11, LEX No. 1153413.
\item \textsuperscript{34} Wyrok NSA z 31 maja 2012, ref. I OSK 2046/11, LEX No. 1264661.
\end{itemize}
from official duties is extended by the superior responsible for suspension from official duties. However, if the suspension from official duties took place pursuant to Art. 39a Section 2 of the Police Act, the period of suspension from official duties is extended by the Chief Commander of the Police (Article 39a(3) of the Police Act).

Impact of suspension from official duties on the content of a police officer’s service relationship

Suspension from official duties has a significant impact on the content of the administrative legal relationship between the authority and the police officer. In addition to the already mentioned possibility of dismissing an officer from service specified in Art. 41 Section 2 point 9 of the Police Act, an important consequence of issuing a decision to suspend an officer from official duties is the suspension of the payment of part of his or her salary. Pursuant to Art. 124 of the Police Act, a police officer suspended from his or her duties has 50% of the most recently due remuneration suspended from the next payment date (Section 1). Despite not performing any official duties, the police officer receives half of his or her remuneration. However, if the criminal or disciplinary proceedings that are the reason for suspension from official duties are completed, the officer receives the suspended part of the remuneration and obligatory increases introduced during the suspension period, unless he or she has been convicted by a final court judgement or punished with a disciplinary penalty of dismissal from service (paragraph 2). This provision therefore ensures that the police officer receives an appropriate amount of remuneration during and after the suspension period. The legislator, using Art. 124 Section 2 of the Police Act, uses the term ‘receives’ to indicate the authority’s obligation to make the payment in the event that criminal or disciplinary proceedings ended other than in conviction or dismissal from service.

Suspension of an officer from official duties also affects the amount of his or her holiday and additional leave. Pursuant to § 7 Section 1 of the Regulation of the Minister of Internal Affairs of September 19, 2014 on leaves of police officers only suspension from official duties or temporary arrest lasting no longer than one month does not limit the police officer’s rights to annual and additional leave. In the case of suspension from official duties or temporary arrest lasting longer than one month, annual and additional leave due in a given calendar year is reduced by 1/12 for each month of suspension from official duties or temporary arrest (§ 7 section 2). The shortening of these leaves does not

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35 On the nature of the remuneration of police officers, see: Gacek P, Zawieszenie oraz potracenie policjantowi uposażenia na podstawie art. 126 ustawy z dnia 6 kwietnia 1990 r. o Policji, Studia Iuridica Toruniensia 2020, No. 27, pp. 41–44.
36 Będziejewska-Michalska M, Uposażenie policjanta, Gazeta Policyjna 2022, No. 5, p. 45.
37 Rozporządzenie ministra spraw wewnętrznych z 19 września 2014 w sprawie urlopów policjantów (DzU, 2014, item 1282 as amended).
apply if criminal proceedings in a case concerning a crime or fiscal offence or disciplinary proceedings in a case concerning an act related to arrest or suspension from official duties was discontinued by a final judgement, unless the proceedings were conditionally discontinued or discontinued due to the statute of limitations or amnesty. Annual and additional leave are not shortened even if a police officer has been acquitted on the basis of a final judgement or acquitted in disciplinary proceedings (§ 7(3)). The amount of the above-mentioned shortened leaves due in a given calendar year is rounded up to full days (§ 7 Section 4). Therefore, the legislator introduced the institution of shortening the leave, i.e. reducing its duration in proportion to the period of suspension from official duties. It is worth noting that in the case of a 12-month suspension period, the amount of annual leave due will be zero.\(^{38}\)

The institution of suspension from official duties also affects the police officer’s right to the annual award and its amount. Art. 110 Section 3a point 3 of the Police Act states that the period of service in a given calendar year, which determines the officer’s right to an annual award, does not include the period of not performing official duties due to suspension from official duties. This provision shall not apply if criminal proceedings concerning a crime or fiscal offence or disciplinary proceedings concerning an act related to suspension from official duties was discontinued by a final judgement or the police officer was acquitted on the basis of a final judgement or a judgement of acquittal in disciplinary proceedings (Article 110(3b) of the Police Act). However, the above-mentioned discontinuation of proceedings does not apply to the conditional discontinuation of criminal proceedings or proceedings in a fiscal offence case or to the discontinuation of these proceedings due to the limitation period or amnesty (Article 110(3c) of the Police Act). It is important that the remuneration on which the amount of the annual bonus depends does not include the remuneration received during the period of suspension from official duties. The provisions of Art. 110 Sections 3b and 3c of the Police Act also apply (Article 110(4a) of the Police Act). The institution of suspension from official duties therefore significantly affects the factors determining both the right to an annual bonus (period of service) and the amount of this benefit (remuneration from which the amount of the annual bonus is calculated).

**Summary**

The analysis carried out verified the research hypothesis set at the beginning. This analysis showed that the institution of suspending a police officer from official duties is a very important manifestation of administrative and legal protection of all police officers in Poland. This institution undoubtedly serves the good of the officer who is not dismissed from police service, despite the existence of grounds for this. Suspension of a police

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oficer from official duties is also intended to prevent a police officer from performing service if he or she is facing specific charges, i.e. one who is under suspicion for conduct unbecoming a police officer. It is extremely important for superiors to use the institution of suspending a police officer from official duties carefully. This institution implies a number of negative consequences for the police officer and significantly affects the content of the service relationship based on which the officer performs his or her duties. A reasonable superior knows best how their subordinate performs his or her official duties, has the ability to objectively assess the likelihood of a crime or disciplinary offence being committed and the advisability of applying optional suspension from official duties and their duration. However, when assessing the entire institution of suspension from official duties, it should be clearly stated that it is an extremely important expression of legal protection for police officers. It allows a police officer to be temporarily excluded from performing his or her duties, without depriving them of their status as a police officer, until the charges against them are clarified.

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Keywords: police officer, the police, suspension, official duties, service relationship, administrative proceedings, crime.

Summary: The aim of the work is to verify the hypothesis that the institution of suspending a police officer from official duties is a very important element of the administrative and legal protection of all police officers in Poland. The service relationship under which a police officer performs activities entrusted to him or her by the state is an administrative and legal relationship. Performing official duties resulting from the content of the administrative and legal relationship between a police officer and the state is the duty of every officer. However, the Police Act provides for the institution of suspending a police officer from official duties, which makes it possible to prohibit a police officer from performing official duties for a specified period. The paper discusses two types of suspension from official duties: obligatory and optional suspension. Attention was also paid to the effects of suspension from official duties on the police officer’s service relationship. The dual nature of the institution in question was emphasised. This institution serves to quickly deprive a police officer of the opportunity to perform his or her official duties until the criminal or disciplinary charges against them are clarified. First of all, however, it has a protective nature for the officer, as it allows him or her to remain in service despite such allegations being made against them.

Palabras clave: funcionario de policía, policía, suspensión, acción oficial, relación laboral, procedimiento administrativo, infracción

Resumen: El objetivo del presente estudio es verificar la hipótesis de que la institución de la suspensión de funciones de un funcionario de policía es un elemento muy importante de la protección administrativo-jurídica de todos los funcionarios de policía en Polonia. La relación laboral en virtud de la cual un funcionario de policía realiza las actividades que le encomienda el Estado es una relación administrativo-jurídica. El ejercicio de las funciones oficiales, derivadas del contenido de la relación administrativo-jurídica que vincula a un funcionario de policía con el Estado, es el deber de cada funcionario. No obstante, la Ley de Policía establece la institución de la suspensión de un funcionario de policía, que permite prohibir a un funcionario de policía el
El estudio aborda dos tipos de suspensión: la suspensión obligatoria y la suspensión facultativa. También se llamó la atención sobre los efectos de la suspensión de funciones de un funcionario de policía en su vida laboral. Esto pone de relieve la doble naturaleza de la institución en cuestión. Esta institución sirve, en efecto, para privar rápidamente a un funcionario de policía de la posibilidad de desempeñar sus funciones profesionales, a la espera de que se resuelvan los cargos penales o disciplinarios que se le imputan. No obstante, tiene sobre todo un carácter protector para el funcionario, ya que le permite permanecer en servicio a pesar de que haya cargos en su contra.