

PARTICIPATION OF THE POLICE IN INVESTIGATION OF FISCAL CRIMES AND PETTY OFFENCES

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1. TASKS OF THE POLICE AND ITS COMPETENCE BY REASON OF THE SUBJECT MATTER

The Police is a non-financial organ in fiscal crime and petty offence investigations. This category of organs also includes the Border Guard Service, the Military Police, the Internal Security Agency (ABW) and the Central Anti-Corruption Bureau (CBA) (Article 53 § 3 and Articles 118 § 1(4)–(6) and 118 § 2 of the Fiscal Penal Code¹). Article 134 § 1(2) FPC provides that the Police, as a non-financial investigative organ, is empowered to conduct investigations in matters of fiscal crimes and petty offences discovered within the scope of its competence.

Its competence by reason of the subject matter is defined by the object and modified by the element that the discovery of a fiscal crime or petty offence falls within the scope of the organ's activities. In the case of the Police, competence by reason of the subject matter is defined by the general clause authorising it to conduct proceedings in matters of fiscal crimes and petty offences. The Police is the only non-financial investigative organ authorised to conduct an investigation in the matter of any fiscal crime or petty offence.²

The Police is entrusted with a number of tasks specified by the Act of 6 April 1990 on the Police.³ These include: (1) protection of human life and health and

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¹ Act of 10 September 1999: Fiscal Penal Code (consolidated text, Dz.U. 2020, item 19, as amended); hereinafter FPC.

² J. Skorupka, [in:] I. Zgoliński (ed.), *Kodeks karny skarbowy. Komentarz*, Warszawa 2018, pp. 848–849; J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy. Komentarz*, Warszawa 2018, p. 858.

³ Consolidated text, Dz.U. 2020, item 360, as amended.

of property against unlawful attempts; (2) protection of the public security, safety and order, including without limitation protecting the peace in the public space and on public transport, in road traffic and on waters intended for universal use; (3) initiation and organisation of activities intended to prevent the commission of crimes, petty offences and criminogenic developments, including collaboration in this regard with state and self-government authorities, as well as social organisations; (4) counter-terrorist activities within the meaning of the Act of 10 June 2016 on counter-terrorism activities;⁴ (5) detection of crimes and petty offences and prosecution of their perpetrators; (6) security at cabinet members' headquarters, excluding facilities intended for the Minister of National Defence or the Minister of Justice, specified by the minister competent for internal affairs; (7) supervision of specialist defensive services indicated by separate provisions; (8) enforcement of order-keeping regulations and administrative provisions relating to public activities or applicable to public spaces; (9) collaboration with the police services of other states and their international organisations, as well as with the bodies and institutions of the European Union, on the basis of international treaties and agreements and separate provisions; (10) processing of criminal information, including personal data; (11) keeping of data sets containing information gathered by authorised bodies, concerning people's fingerprints, unidentified prints from crime scenes, and results of DNA testing.

The Police also has tasks arising from the European Union law and international treaties and agreements, on such terms and in such scope as such treaties or agreements define, as well as from the Act of 9 March 2017 on the system for monitoring of road and railway transport of goods and trade in heating fuels⁵ (Article 1 paras 2–4 of the Act on the Police).

The analysis of the above task list from the perspective of fighting fiscal crime shows that no task from the list refers to offences defined by the Fiscal Penal Code. As noted by Magdalena Kołdys, the lack of the relevant distinction in Article 1 para. 2(4) of the Act on the Police (which deals with the detection of crimes and petty offences and prosecution of the offenders) does not preclude a broad construction of this provision. On the contrary, its language implies reference to crimes and petty offences defined in either the Criminal Code⁶ or the Petty Offences Code,⁷ but also those specified in the Fiscal Penal Code.⁸ Kołdys's view appears to be somewhat isolated, though one supported by the fact that the lawmaker's intention certainly was to equip the Police with law-enforcement powers not only concerning ordinary crimes and petty offences but also those of the fiscal kind. Still, due to being ambiguous as it is, the statutory expression should be amended for clarity.

⁴ Consolidated text, Dz.U. 2019, item 796.

⁵ Consolidated text, Dz.U. 2020, item 859.

⁶ Act of 6 June 1997: Criminal Code (consolidated text, Dz.U. 2019, item 1950, as amended); hereinafter CC.

⁷ Act of 20 May 1971: Petty Offences Code (Dz.U. 2019, item 821, as amended); hereinafter POC.

⁸ M. Kołdys, *Rola i zadania niefinansowych organów postępowania przygotowawczego*, *Prokuratura i Prawo* 3, 2017, pp. 113–114.

2. SCOPE AND MANNER OF EXERCISING THE POLICE'S POWERS IN FISCAL CRIME MATTERS

One of the ways in which the Police exercises its powers with regard to the detection of criminal and petty offences, including fiscal ones, and the prosecution of offenders involves operational-exploratory activities referred to in Article 14 para. 1(1) of the Act on the Police. The aforementioned provision narrowed this down to the purpose of 'exploration, prevention and detection of criminal offences, fiscal criminal offences and petty offences'. The provision was amended by the Act of 14 December 2018 on the protection of personal data processed in relation to prevention and counteraction of crime⁹ by adding the expression 'fiscal criminal offences'. The result of the amendment is that the Police's powers in the area of operational-exploratory activities are limited to the exploration, prevention and detection of criminal offences, fiscal criminal offences and petty offences, with the exclusion of fiscal petty offences.

The literature on criminal procedure and forensics has seen various attempts to define operational-exploratory activities (*czynności operacyjno-rozpoznawcze*), as no statutory definition has been provided, yet. Writers are not unanimous on the matter. Hence, the activities are variously and interchangeably referred to as, among other expressions, operational activities, operational work, or operational-exploratory activities, as used in this article.¹⁰

As described by Leon Schaff, operational activities are non-evidentiary technical and tactical activities shaped by the practice of law-enforcement authorities and aimed at crime prevention.¹¹ According to S. Owczarski, they are a set of secret or confidential, not evidence-worthy but still lawful activities undertaken by law-enforcement bodies on the basis of confidential personal sources of information and technical measures, for which the legal basis is found in the statutes regulating the activities of the law enforcement, as well as executive regulations enacted thereunder, and the internal regulations of the various law-enforcement services.¹² Tadeusz Hanausek, on the other hand, conceives operational-exploratory activities as a separate system of confidential or secret activities of the law enforcement, undertaken outside of criminal proceedings but usually with a view to the current or future goals of those proceedings, aimed at crime prevention and the prevention and counteraction of other legally specified negative social developments. The activities serve the purpose primarily through the gathering, verification and use – for detection purposes and for the purpose of providing direction for evidentiary efforts – of information about events, environments or persons attracting legitimate interest.¹³ In Stanisław Waltoś's opinion, in turn, as the expression 'operational

⁹ Dz.U. 2019, item 125.

¹⁰ A. Łyżwa, M. Tokarski, [in:] Ł. Czebotar, Z. Gądzik, A. Łyżwa, A. Michałek, A. Świerczewska-Gąsiorowska, M. Tokarski, *Ustawa o Policji. Komentarz*, Warszawa 2015, p. 244.

¹¹ L. Schaff, *Zakres i formy postępowania przygotowawczego*, Warszawa 1961, p. 77.

¹² S. Owczarski, *Problematyka postępowania operacyjnego w świetle prawa i praktyki*, Przegląd Sądowy 4, 1994, p. 70.

¹³ T. Hanausek, *Kryminalistyka. Poradnik detektywa*, Katowice 1993, p. 93.

activity' contains too many unknowns and lacks indisputable, tangible *designata*, no definition of it could possibly be free of risk.¹⁴ Jan Widacki views operational-exploratory activities as the aggregate of secret (or confidential) non-evidentiary activities undertaken by the law enforcement with the goal of obtaining information for the purposes of criminal proceedings or frustrating the commission of an attempted crime.¹⁵ Brunon Hołyst distinguishes two basic characteristics of operational-exploratory activities: confidentiality and limited scope of application due to the basis, i.e. internal provisions, and due to the actor performing the activities, i.e. the bodies of the ministry of the interior.¹⁶

Operational-investigative activities must always be undertaken in compliance with the applicable statutory framework. The Supreme Court is of the correct view that while the Police, for the purpose of exploration, prevention and detection of criminal offences and petty offences, and detection and identification of perpetrators, has the right to engage in operational-exploratory activities (especially those defined in Article 14 para. 1 and the beginning of Article 19 para. 1 of the Act on the Police), the use of materials obtained through such activities as evidence in criminal proceedings, to be publicised under Article 393 § 1 of the Criminal Procedure Code,¹⁷ is conditional on a finding that such materials have been gathered in compliance with the appropriate statutory requirements for the various types of threats to the public order in connection with which the activities are undertaken.¹⁸ Violation of legal provisions can result in abuse of powers, which may consist in acting within one's powers but outside of the legal terms governing the use of such powers.¹⁹ Allegations of official misconduct in the form of abuse of powers or disciplinary violation must state the specific provision contravened or violated by the official in question.²⁰

During the performance of operational-exploratory activities, undertaken by the Police with a view to the prevention or detection of crime or detection and identification of perpetrators, as well as the gathering and securing of evidence, in matters of publicly prosecuted intentional fiscal criminal offences, if the value of the object of the act or the diminution of the public levy exceeds fifty times the value of the lowest wage of work²¹ determined on the basis of separate provisions,

¹⁴ S. Waltoś, *Model postępowania przygotowawczego na tle prawnoporównawczym*, Warszawa 1968, p. 146.

¹⁵ J. Widacki, [in:] *Kryminalistyka*, J. Widacki (ed.), Part 1, Katowice 1984, p. 127.

¹⁶ B. Hołyst, *Kryminalistyka*, Warszawa 2004, p. 47.

¹⁷ Act of 6 June 1997: Criminal Procedure Code (consolidated text, Dz.U. 2020, item 30, as amended); hereinafter CPC.

¹⁸ See the Supreme Court order of 22 September 2009 in III KK 58/09, *Legalis*.

¹⁹ The Supreme Court judgment of 28 November 2009 in III KK 152/06, *Legalis*.

²⁰ B. Opaliński, M. Rogalski, P. Szustakiewicz, *Ustawa o Policji. Komentarz*, Warszawa 2015, pp. 62–63.

²¹ The expression 'lowest wage of work' is defined in Article 25 of the Act of 10 October 2002 on the minimum wage of work (consolidated text, Dz.U. 2018, item 2177 and Dz.U. 2019, item 1564), which provides: 'Wherever the provisions of the law mention the "lowest wage of work" by reference to separate provisions or to the Labour Code or by reference to the Minister of Labour and Social Policy or a minister competent for matters of employment as the authority required to determine such wage pursuant to separate provisions or the Labour Code, this shall

or in intentional fiscal criminal offences under Article 107 § 1 FPC, consisting in organising and holding gambling games in violation of statute or in violation of the terms of the concession or permit,²² if other measures have proven futile or will be of no use, a regional court may order operational control (surveillance) at the written request of the Chief Commandant of the Police, the Commandant of the Central Investigation Bureau of the Police, or the Commandant of the Police Internal Bureau, filed with the prior written consent of the Prosecutor General, or at the written request of the regional commandant of the Police filed with the prior written consent of a regional prosecutor competent by reason of the location of the applying Police organ (Articles 19 para. 1(4)–(4a) of the Act on the Police). The request for operational control should be submitted with materials supporting the need to resort to operational control (Article 19 para. 1a of the Act on the Police).

Operational control may be used in the course of the operational-exploratory activities undertaken by the Police with a view to the prevention and detection – and identification of perpetrators, and acquisition and securing of evidence – of publicly prosecuted intentional offences enumerated in Article 19 para. 1(1)–(8), including the aforementioned intentional fiscal criminal offences. Hence, operational control is restricted to those alone. The Supreme Court is correct in holding²³ that since the rational lawmaker decided to narrow the spectrum of criminal offences for which the Police can use operational control, no argument (other than teleological) can be provided in support of arbitrarily expanding that list to include other crimes. The similarity of other offences or their sentencing limits cannot justify departure from the strict, literal wording of Article 19 para. 1 of the Act on the Police. It is the legislature itself, guided – among other considerations – by the proportionality test, that has restricted the list in this manner, thus leaving the courts and law enforcement with no discretion in this respect.²⁴

In summary, Article 19 para. 1 of the Act on the Police provides a closed list of criminal offences, and thus evidence obtained during lawful operational control may be used in criminal proceedings or fiscal criminal proceedings only in reference to the offences from the list. This means that evidence obtained by such control with regard to individual crimes committed within an organised criminal group (Article 258 CC) will not be admissible if those crimes are not on the list.²⁵

Operational control may be ordered when other measures have proven futile or will be of no use. The order is issued by a regional court competent by reason of

mean the sum of PLN 760.’ This is different from the ‘minimum wage of work’ defined in the Regulation of the Council of Ministers of 10 September 2019 on the minimum wage of work and minimum hourly rate in 2020 (Dz.U. 2019, item 1778), which, since 1 January 2020, has been PLN 2,600 gross. Effective from 1 January 2021, on the other hand, it will be PLN 2,800 gross on the basis of the Regulation of the Council of Ministers of 15 September 2020 on the minimum wage of work and minimum hourly rate in 2021 (Dz.U. 2020, item 1596). The legislature should consider replacing the archaic leftover expression ‘lowest wage of work’ with ‘minimum wage of work’.

²² The sentencing limits for this offence are up to 720 daily rates of fine or up to three years’ imprisonment, or both.

²³ The Supreme Court judgment of 30 January 2013 in III KK 130/12, *Legalis*.

²⁴ B. Opaliński, M. Rogalski, P. Szustakiewicz, *supra* n. 20, p. 109.

²⁵ *Ibid.*, p. 109; see the Supreme Court order of 10 October 2012, I KK 336/11, unpublished.

location for the headquarters of the applying Police organ (Article 19 para. 2 of the Act on the Police). The use of materials obtained through such activities as evidence in criminal proceedings, disclosable under Article 393 § 1 CPC, is necessarily conditional on a finding that such materials have been gathered in compliance with the appropriate statutory requirements for the various types of threats to the public order in connection with which the activities are undertaken. Where the operational control produces evidence of the commission of offences specified in Article 19 para. 1 of the Act on the Police by a person other than the target of the order issued under Article 19 para. 2 of the Act, such evidence may be used in court proceedings (first sentence of Article 393 § 1 CPC), on condition of the court's post-fact consent for operational control (Article 19 para. 3 of the Act on the Police).²⁶

In cases admitting no delay, if the consequence would be the loss of information or obfuscation or destruction of evidence of crime, the Chief Commandant of the Police, the Commandant of the Central Investigation Bureau of the Police, or the Commandant of the Police Internal Bureau, or the regional commandant of the Police may, with the prior written consent of a competent prosecutor, i.e. the Prosecutor General or a regional prosecutor, order operational control simultaneously with applying to the regional court for an order in the matter. If the court fails to grant such consent within five days of the day when the operational control is ordered, the ordering body must cease the control and destroy the materials obtained, acting by a committee and on the record (Article 19 para. 3 of the Act on the Police).

The *ratio* of the mechanism adopted in Article 19 para. 3 of the Act on the Police is to make sure that the deep interference with constitutionally protected rights and freedoms, inevitably resulting from operational control ordered by a Police organ, even with a prosecutor's consent, undergoes judicial review shortly and is either legalised by the court or stopped.²⁷ The court cannot give its so-called post-fact consent if the authority ordering the control fails to comply with the conditions governing the case admitting no delay as referred to in Article 19 para. 3 of the Act on the Police. If the case does not meet this description, the ordered surveillance will exceed the limits of lawful operational control. Violation of these conditions (Article 19 para. 3 of the Act on the Police) will lead to refusal of the court's consent. Not only non-compliance with the time limit for requesting the consent or with the principle of subsidiarity but also the lack of a prior order by a non-judicial authority or written consent of the competent prosecutor will be tantamount to the absence of grounds to conclude that the case has admitted no delay.²⁸

Where there is a need to order operational control in reference to a suspected person or a court defendant, the Police organ's request for such an order must contain a mention of the proceedings pending in respect of such a person (Article 19 para. 5 of the Act on the Police).

²⁶ B. Opaliński, M. Rogalski, P. Szustakiewicz, *supra* n. 20, pp. 109–110; the Supreme Court judgment of 5 April 2012, KK 400/11, unpublished.

²⁷ Order of the Court of Appeal in Warsaw of 12 May 2008, II APKZ PF-2/08, *Legalis*.

²⁸ B. Opaliński, M. Rogalski, P. Szustakiewicz, *supra* n. 20, pp. 110–111; D. Drajewicz, *Zgoda następcza sądu na stosowanie kontroli operacyjnej*, *Prokuratura i Prawo* 1, 2009, p. 87.

The Police's operational-exploratory activities in matters of crimes set out in Article 19 para. 1 of the Act on the Police, undertaken with a view to corroborating previously obtained credible information about the crime and identification of the perpetrators and proceedings of the crime, may consist in the classified purchase, sale or takeover of such proceeds of the crime as are liable to forfeiture or prohibited from being produced, possessed, transported or traded (controlled purchase),²⁹ or in accepting or offering an economic benefit (controlled bribe),³⁰ as stipulated under Article 19a para. 1 of the Act on the Police.

It follows from this provision that operational-exploratory activities in the form of a controlled purchase or bribe may be employed against the same crimes as operational control. Bearing in mind the subject at hand, these activities are available in particular only for intentional fiscal criminal offences, where the value of the object of the act or diminution of public levy exceeds fifty times the lowest wage of work, as defined on the basis of separate provisions, or intentional fiscal criminal offences under Article 107 § 1 FPC (Article 19 para. 1(4)–(4a) of the Act on the Police in conjunction with Article 19a para. 1 of the same Act). Thus, the above operational-exploratory activities are prohibited in the case of fiscal criminal offences not found on the list.³¹

Operational activities consisting in the controlled purchase or bribe may be reduced to merely making such an offer (Article 19 para. 2 of the Act on the Police). This, however, must not be proactive by involving solicitation, threats, physical or mental coercion. The recipient of the offer must have the freedom to accept the offer or reject it. If the conduct of a Police officer or a Police collaborator violates this rule, it may lead to criminal or disciplinary liability.³² Similarly, incitement, aiding or abetting or directing criminal activities would not be permissible in this context; they would constitute illegal provocation.³³

While performing operational-exploratory activities undertaken with a view to documenting fiscal criminal offences defined in Article 19 para. 1(4)–(4a) of the Act on the Police or determining the identity of the participants of those offences or seizing the objects of the crime, the Chief Commandant of the Police, the Commandant of the Central Investigation Bureau of the Police, the Commandant of the Police Internal Bureau, or the regional commandant of the Police may order the undisclosed surveillance of the production, transportation, storage or trade of the objects of the crime if doing so will not endanger human life or health. A regional prosecutor competent by reason of the location of the Police organ ordering the activities must be notified without delay. The prosecutor may order the discontinuation of the activities at any time (Article 19b paras 1 and 2 of the Act on the Police).

²⁹ See, more extensively: Z. Gądzik, [in:] Ł. Czebotar, Z. Gądzik et al. *Ustawa o Policji*, *supra* n. 10, pp. 252–253.

³⁰ See, in more detail *ibid.*, p. 253.

³¹ Cf. R. Lizak, *Kontrolowane przyjęcie lub wręczenie korzyści majątkowej*, *Wojskowy Przegląd Prawniczy* 1, 2011, p. 27 et seq.

³² Z. Gądzik, [in:] Ł. Czebotar, Z. Gądzik et al., *Ustawa o Policji*, *supra* n. 10, p. 253; the Supreme Court judgment of 10 July 2007, II KK 387/06, OSNwSK 2007, No. 1, item 1587.

³³ M. Kołodziejczak, A. Sobiech, *Prawnie dopuszczalne postacie prowokacji*, *Państwo i Prawo* 11, 2010, p. 39.

3. POWERS OF THE POLICE IN INVESTIGATION OF FISCAL CRIMINAL OFFENCES

The empowerment of the Police to conduct investigations into fiscal criminal offences and petty offences arises from Article 134 § 1(2) FPC. Additionally, Article 134 § 2 FPC requires the Police to notify the financial investigative authorities without delay of any investigations by sending a copy of the order opening the proceedings. The Police may, however, avoid this obligation by limiting its activities to securing of traces and evidence of a fiscal criminal offence or petty offence and handing the case over to the financial investigative authorities for further proceedings (Article 134 § 2 FPC).

It is a common view in the literature³⁴ that the language of Article 134 § 2 FPC clearly allows the Police to act in two different ways in the event of discovering a fiscal crime or petty offence. Firstly, the Police may open fiscal criminal proceedings, of which it must notify the competent financial investigative authorities without delay, by sending a copy of the relevant order (Article 134 § 2 FPC). If the investigation is conducted in the more solemn form (*śledztwo*, as opposed to the simpler *dochodzenie*), the prosecutor also has to be notified by sending a copy of the order (Article 305 § 3 CPC in conjunction with Article 113 § 1 FPC). On the other hand, the Police may limit its activities to securing of the traces and evidence of a fiscal criminal offence or petty offence and hand the case over to the financial investigative authorities for further investigation (the later part of Article 134 § 2 FPC). The linguistic wording of this provision lends itself to the conclusion that the legislature has opted to leave the Police with the choice between the two ways to proceed after discovering a fiscal criminal offence or petty offence, provided that this right is limited in time to the stage of securing the traces and evidence of the fiscal criminal offence or petty offence. In principle, the decision to hand the proceedings over to the financial investigative authorities rests with a body detecting the crime or petty offence, in this case the Police. The decision may, however, also be made by a prosecutor as the supervising organ (Article 326 § 3(4) CPC in conjunction with Article 113 § 1 FPC).³⁵

In some cases, the handing over of a case by the Police to the financial investigative authority is mandatory, usually after the stage of securing evidence and instituting the proceedings. This requirement arises when the perpetrator requests a plea arrangement (Article 134 § 4 FPC). To do so is a right of which one should be informed before the first interrogation. The Fiscal Penal Code only requires the financial investigative authority to provide this particular information (Article 142 § 2 FPC). The perpetrator, however, is still free to submit such a request

³⁴ J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks*, 2018, *supra* n. 2, p. 860; T. Razowski, [in:] P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy. Komentarz*, Warszawa 2017, pp. 1202–1203; H. Skwarczyński, *Uprawnienia Straży Granicznej w postępowaniu o przestępstwa i wykroczenia skarbowe*, *Wojskowy Przegląd Prawniczy* 3, 2003, pp. 100–101; *idem*, *Udział Policji w postępowaniu karnym skarbowym*, *Przegląd Policyjny* 3, 2001, pp. 114–115; *idem*, *Udział Policji w postępowaniu karnym skarbowym po nowelizacji k.k.s.*, *Przegląd Policyjny* 2, 2006, pp. 75–76.

³⁵ H. Skwarczyński, *Udział Policji*, 2006, *supra* n. 34, p. 76; *idem*, *Udział Policji*, 2001, *supra* 34, p. 115; *idem*, *Uprawnienia Straży Granicznej*, 2003, *supra* n. 34, p. 101; J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks*, 2018, *supra* n. 2, p. 860.

to a non-financial investigative organ, including the Police. Things being so, the non-financial organ also should provide the same information, even though this is not expressly mentioned in the Code.³⁶ In the opinion of Hubert Skwarczyński, one could look to Article 114 § 2 FPC in conjunction with Article 16 § 2 CPC for the source of this obligation also for a non-financial organ, provided that the diminution of public levy has occurred. The obligation does not exist wherever there are bars to permitting a plea arrangement.³⁷

The involvement of the Police in fiscal criminal investigations is closely connected with the construct of the ideal concurrence of offences under Article 8 § 1 FPC. The latter means that the same conduct fulfils the elements of a fiscal criminal offence or a fiscal petty offence and of an offence or petty offence defined in the Criminal Code or some other statute containing criminal provisions. It follows from Article 134 § 5 FPC that if conduct constituting a criminal offence or a petty offence defined in the criminal provisions of a different statute, belonging to the competence of the Police, simultaneously fulfils the elements of a fiscal criminal offence or a fiscal petty offence, the non-financial investigative authority competent in accordance with Article 134 § 1 FPC to conduct an investigation in a fiscal criminal matter may open proceedings, notifying without delay the competent financial investigative authority, or content itself with securing the traces and evidence of the criminal conduct and hand the case over to the financial organ within the scope of conduct covered by fiscal penal law. If the perpetrator requests a plea arrangement, such a request must be forwarded to the financial investigative authority.³⁸

The powers of the Police, if conducting proceedings in the matter of a fiscal criminal offence, include the right to prepare the indictment. Approving the indictment and submitting it to the court belongs to the prosecutor (Article 331 § 1 CPC in conjunction with Article 113 § 1 FPC). If the conditions are met for an application for probationary dismissal of the proceedings, then preparing such an application and submitting it to the court in lieu of a bill of indictment belongs to the prosecutor (Article 336 § 1 CPC in conjunction with Article 113 § 1 FPC), although the Police can recommend the submission of such an application. If the investigation ends in a decision to dismiss the proceedings (Article 17 § 1 CPC and Article 322 CPC in conjunction with Article 113 § 1 FPC) or suspend the proceedings

³⁶ M.R. Tużnik, *Postępowania szczególne w postępowaniu karnym skarbowym*, Warszawa 2013, p. 270; *eadem*, *Postępowanie w przedmiocie udzielenia zezwolenia na dobrowolne poddanie się odpowiedzialności w postępowaniu karnym skarbowym*, *Ius Novum* 1, 2012, p. 82; H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej w postępowaniu karnym skarbowym*, *Wojskowy Przegląd Prawniczy* 3–4, 2001, pp. 36–37; *idem*, *Uprawnienia Straży Granicznej*, 2003, *supra* n. 34, pp. 101–102; *idem*, *Udział Policji*, 2001, *supra* n. 34, p. 115; I. Zgoliński, *Dobrowolne poddanie się odpowiedzialności w prawie karnym skarbowym*, Warszawa 2011, p. 130; D. Świecki, *Dobrowolne poddanie się odpowiedzialności w kodeksie karnym skarbowym*, *Przegląd Sądowy* 3, 2001, p. 88; A. Skowron, *Kontrowersje wokół regulacji postępowania w sprawach o wykroczenia skarbowe*, *Prokuratura i Prawo* 12, 2000, pp. 69–70.

³⁷ H. Skwarczyński, *Udział Policji*, 2006, *supra* n. 34, p. 77; *idem*, *Uprawnienia Straży Granicznej*, 2003, *supra* n. 34, pp. 101–102.

³⁸ L. Wilk, J. Zagrodnik, *Kodeks*, 2018, *supra* n. 2, pp. 864–865; cf. H. Skwarczyński, *Zbieg czynów karalnych i zbieg przepisów w prawie karnym skarbowym a właściwość organów postępowania przygotowawczego*, *Wojskowy Przegląd Prawniczy* 3, 2005, p. 127.

(Article 22 CPC in conjunction with Article 113 § 1 FPC), the Police may issue a decision in such matters, subject to the requirement of the prosecutor's approval (Article 305 § 3 and Article 325e § 2 CPC in conjunction with Article 113 § 1 FPC). The Police's autonomy is also restricted when it comes to ordering protective measures. The available list of those, in fiscal crimes, is provided for in Article 22 § 3 FPC. The Police, however, lacks the power to apply any of them, even though investigating a fiscal criminal offence or petty offence. If a fiscal criminal investigation shows that the suspect has committed the offence while insane or in some other state of non-accountability and the grounds for the application of protective measures are met, the Police should hand the case over to the prosecutor who is the authority competent to apply to the court, after the closure of the proceedings, to dismiss the proceedings and order protective measures (Article 324 CPC in conjunction with Article 113 § 1 FPC). Nor is the Police competent to apply to the court for a forfeiture order as a protective measure under Article 323 § 3 CPC in conjunction with Article 113 § 1 FPC or an order disposing of material evidence following dismissal of the proceedings (Article 323 § 1 CPC in conjunction with Article 113 § 1 FPC). In proceedings conducted by a non-financial investigative authority, these powers are reserved for the prosecutor.³⁹

The Police's powers include the use of the *in-absentia* track in proceedings in either a fiscal criminal offence or a fiscal petty offence. The required conditions are as follows: (1) the perpetrator of the fiscal criminal offence or petty offence permanently resides abroad, or (2) the perpetrator's residence in-country cannot be determined (Article 173 § 1 FPC). In cases of fiscal criminal offences proper, this track is available against the defendant and also against the entity held subsidiarily liable. In case of fiscal petty offences, by contrast, the latter does not appear here (Article 53 § 40 FPC).

The decision to conduct *in-absentia* proceedings, when issued by the Police or any other non-financial or financial investigative organ, requires prosecutorial approval in cases of fiscal criminal offences proper (Article 175 §1 FPC second sentence).⁴⁰

When discussing the powers of the Police in investigations into fiscal criminal offences, it is necessary to emphasize that such offences can be investigated in either of the two forms of investigation available under Polish law, i.e. the more formal *śledztwo* or the more simplified *dochodzenie* (inquiry). For the investigation of a fiscal petty offence, only the latter is available (Article 152 FPC). The authority competent to conduct the investigation in the form of *śledztwo* is either a prosecutor or a financial investigative authority. The prosecutor is the primary organ of this investigation mode in fiscal criminal offences, for the financial organs may conduct it only when the prosecutor does not do so (Article 151a § 1 FPC). The following are the requirements for the application of the above-said mode to fiscal criminal offences: (1) a fiscal criminal offence is committed in conditions set out in Article 37 § 1 FPC or Article 38 § 2 FPC; (2) the suspected person is a judge, a prosecutor,

³⁹ H. Skwarczyński, *Udział Policji*, 2006, *supra* n. 34, pp. 79–80.

⁴⁰ *Ibid.*, p. 80; M. Tużnik, *Postępowanie w stosunku do nieobecnych w postępowaniu karnym skarbowym*, *Ius Novum* 2, 2011, p. 66.

a Police officer or an officer of the Internal Security Agency, the Intelligence Agency or the Central Anti-Corruption Bureau; (3) the suspected person is an officer of the Border Guard Service, the Military Police or a financial investigative authority, or the latter's superior organ; (4) the prosecutor or the financial investigative authority orders so (Article 151a §2 FPC).

The legislature has mandated that in the cases referred to in Article 151a § 2(2)–(3) FPC, the more formal mode (*śledztwo*) should be used whether or not the persons listed in those provisions have committed a fiscal crime in connection with their official duties or within the scope of cases belonging to their competence. Any fiscal criminal offence committed by persons from the list must be investigated pursuant to the more formal mode. In the above cases the prosecutor conducts what is called 'own investigation', which he/she carries out but in which specific activities may be entrusted to some other organ, including the Police. Activities that must not be delegated in such a manner include presenting, amending or supplementing the charges or closing the investigation. All of those activities mandatorily require the prosecutor's own performance (Article 151b § 2 FPC second sentence).

In those cases in which the use of the *śledztwo* mode is the prosecutor's decision, the prosecutor may entrust the Police with the entire conduct of the proceedings or a specific scope of them or specific activities therein (Article 151b § 2 in conjunction with Article 118 § 1(5) FPC first sentence).⁴¹

4. POWERS OF THE POLICE IN INVESTIGATION OF FISCAL PETTY OFFENCES

The investigation of fiscal petty offences is governed by many of the rules applicable to the investigation of fiscal criminal offences proper. However, due to the lower gravity of petty offences as compared to crimes, some aspects have been simplified and even some separate institutions have been introduced in order to streamline and expedite the proceedings.⁴²

Firstly, as it has already been noted, in cases of fiscal petty offences the simplified *dochodzenie* (inquiry) is the only investigation mode available (Article 152 FPC second sentence), while in cases of fiscal criminal offences proper this mode is available, unless the formal *śledztwo* is statutorily required.

Here, *dochodzenie* is simplified and restricted to the interrogation of the suspect and, if needed, also other activities to the extent necessary for an indictment or some other conclusion of the proceedings (Article 152 FPC second sentence). In its activities, the procedural organ, including the Police, is obliged to comply with requirements mandatory for validity, such as the drawing up of a transcript after the interrogation of a suspect (Article 143 § 1(2) CPC in conjunction with Article 113 § 1 FPC). The

⁴¹ See J. Skorupka, *Komentarz do wybranych przepisów Kodeksu karnego skarbowego*, LEX 2020, commentary on Articles 151a and 151b.

⁴² H. Skwarczyński, *Uprawnienia Straży Granicznej*, 2003, *supra* n. 34, 105–106; *idem*, *Udział Policji*, 2006, *supra* n. 34, p. 84.

ratio of these solutions is found in the need to streamline and rationalise the investigation of some minor misconduct like fiscal petty offences.⁴³

As the literature tends to emphasize,⁴⁴ restrictions on formalised evidentiary activities in the investigation need to be considered solely in the categories of the possibility of limiting the investigation of a fiscal criminal offence to the interrogation of a suspect and completion of activities intended to determine whether the conditions are met for an indictment or some other conclusion of the proceedings.

Secondly, another distinction involves the duration and extension of the investigation in the form of *dochodzenie* into fiscal petty offences. The rule is that if the proceedings conducted by an investigative organ fail to conclude within two months, the superior authority may extend the proceedings by a set time (Article 153 § 3 FPC).⁴⁵ As noted by Jarosław Zagrodnik,⁴⁶ while Article 153 § 3 FPC provides for optional extensions, it does not stipulate any maximum duration. Thus, the statute of limitations is regarded as the only limit (Article 51 § 1 and § 2 FPC). In investigations conducted by a non-financial investigative authority (the Police), the ordering of extension is a power reserved to its superior authority, specified in Article 53 § 39a FPC, which means the prosecutor.

Thirdly, in cases of fiscal criminal offences, the Police may either refuse to open new proceedings or close existing proceedings where the perpetrator's single conduct has fulfilled the elements of a fiscal petty offence and a criminal offence, and criminal proceedings in the case of the latter have already been concluded with a final and unappealable conviction (Article 151 § 1 FPC). Such situations are relatively rare, due to the requirement of a final and unappealable conviction. In practice, dismissals and refusals to open new proceedings are more frequent where the same prohibited conduct fulfils the elements of a fiscal petty offence and of a criminal offence, and criminal proceedings are pending in the matter of an *ex-officio* prosecuted crime (Article 151 § 2 FPC).

Either in the case stipulated in Article 151 § 1 FPC, or in that under Article 151 § 2 FPC, such a dismissal or refusal is optional. When acting as an authority conducting the investigation of a fiscal petty offence and considering one of these two decisions, the Police should take into account the already materialised conviction for a criminal offence (§ 1) or its probability in the future (§ 2). In both scenarios, it must consider the financial interests of the State Treasury, or a unit of local self-government or other rights-holders.⁴⁷

Next, in cases of fiscal petty offences, there is the option to proceed by penalty notice, if a perpetrator's identity and the circumstances of a fiscal petty offence do not raise doubt and there is no need for a penalty more severe than stipulated in

⁴³ See J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy. Komentarz*, Warszawa 2014, p. 908; L. Wilk, J. Zagrodnik, *Prawo karne skarbowe*, Warszawa 2009, p. 485; F. Prusak, *Kodeks karny skarbowy. Komentarz*, Vol. II, Kraków 2006, p. 1122.

⁴⁴ J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks*, 2014, *supra* n. 43, p. 909; T. Grzegorzczuk, *Kodeks karny skarbowy. Komentarz*, Warszawa 2009, p. 627.

⁴⁵ H. Skwarczyński, *Udział Policji*, 2006, *supra* n. 34, p. 85; *idem*, *Uprawnienia Straży Granicznej*, 2003, *supra* n. 34, p. 107.

⁴⁶ J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks*, 2014, *supra* n. 43, p. 914.

⁴⁷ *Ibid.*, p. 885; F. Prusak, *supra* n. 43, p. 1109.

Article 48 § 2 FPC, nor any of the bars specified in Article 137 § 2 FPC (Article 137 § 1 FPC). The Police, similarly to the Border Guard Service and the Military Police, is not a competent authority to issue fines by way of a penalty notice. This is the direct consequence of the wording of the Regulation of the Council of Ministers of 22 February 2017 amending the Regulation on the imposition of fines by penalty notice, enacted pursuant to Article 136 § 1 FPC.⁴⁸ The Regulation vests this power only in the financial investigative authorities, that is:

- (1) authorised employees of tax offices – authorisation granted by the head of a competent tax office;
- (2) authorised employees and officers of the Customs-and-Fiscal Service exercising their duties in customs-and-fiscal offices (*urzędy celno-skarbowe*) – authorisation granted by the head of a competent customs-and-fiscal office;
- (3) authorised employees and officers of the Customs-and-Fiscal Service performing the tasks of the National Fiscal Administration in the organisational units of the department serving the minister competent for public finance – authorisation granted by the Chief of the National Fiscal Administration (§ 1).⁴⁹

5. CONCLUSIONS

The study into the role of the Police in the investigations of fiscal criminal offences and petty offences has prompted the following conclusions.

(1) The competence of the Police by reason of the subject matter is delimited in such a way that, as the only organ among the non-financial investigative authorities, it is vested with the power to conduct investigations into any fiscal crime or petty offence (Article 134 § 1(2) FPC). On the other hand, the delimitation of the Police's tasks in the Act of 6 April 1990 on the Police in the area of counteracting fiscal criminal offences and petty offences is highly imprecise, since the wording of Article 1 para. 2(4) of the Act (which stipulates the detection of crimes and petty offences and prosecution of offenders) may imply that these tasks do not include fiscal crimes and petty offences. Hence, the above provision needs to be amended in order to eliminate such interpretative doubts.

(2) Within the limits of its tasks consisting in the detection of criminal offences and petty offences, including fiscal criminal ones, and the prosecution of offenders, the Police is vested with the power to carry out operational-exploratory activities as referred to in Article 14 para. 1(1) of the Act on the Police. This provision arises no interpretative doubt, as it stipulates that the Police is to perform operational-exploratory activities for the purpose of, 'exploration, prevention and detection of criminal offences, fiscal criminal offences and petty offences'. The wording of Article 14 para. 1(1) of the Act on the Police makes it clear that the powers of the Police in the area of operational-exploratory activities are limited to the exploration,

⁴⁸ Dz.U. 2017, item 401.

⁴⁹ See M.R. Tużnik, *Postępowania szczególne*, 2013, *supra* n. 36, p. 330; *eadem*, *Participation of the Military Police in Fiscal Penal Proceedings [Udział Żandarmerii Wojskowej w postępowaniu karnym skarbowym]*, *Ius Novum* 3, 2018, pp. 92–93.

prevention and detection of criminal offences, fiscal criminal offences and petty offences, with the exclusion of fiscal petty offences.

In the performance of the operational-exploratory activities undertaken by the Police with a view to the prevention or detection of crime or detection and identification of perpetrators, as well as gathering and securing of evidence, in matters of publicly prosecuted intentional criminal offences, enumerated in Article 19 para. 1(1)–(8) of the Act on the Police, including fiscal criminal offences, if the value of the object of the act or the diminution of the public levy exceeds fifty times the value of the lowest wage of work determined on the basis of separate provisions, or intentional fiscal criminal offences under Article 107 § 1 FPC, operational control (surveillance) is one of the available options. It may be ordered by the regional court at a written request of the Chief Commandant of the Police, the Commandant of the Central Investigation Bureau of the Police, or the Commandant of the Police Internal Bureau, filed upon prior written consent of the Prosecutor General, or at a written request of the regional commandant of the Police filed upon prior written consent of a regional prosecutor competent by reason of the location of the applying Police organ (Articles 19 para. 1(4)–(4a) of the Act on the Police).

Based on Article 19a para. 1 of the Act on the Police, the Police is authorised to resort to controlled purchases and bribes. The analysis of the above provision prompted the conclusion that operational-exploratory activities in the form of a controlled purchase or bribe may be employed against the same crimes as operational control.

(3) The Police, having the status of a non-financial investigative body in cases of fiscal criminal offences proper or fiscal petty offences, is simultaneously under an obligation to notify financial investigative authorities without delay by sending a copy of the order opening the proceedings. The Police may, however, avoid this obligation by limiting its activities to securing traces and evidence of a fiscal criminal offence or a fiscal petty offence and handing the case over to the financial investigative authorities for further proceedings (Article 134 § 2 FPC). Where a perpetrator has requested a plea arrangement and received written guidance on the conditions of its admissibility, the Police is mandatorily required to hand the case over to the competent financial investigative authority (Article 134 § 4 FPC). The Police, being a non-financial investigative organ competent to conduct an investigation in a fiscal criminal matter, may open the proceedings, notifying without delay the competent financial investigative authority, or it may limit itself to securing the traces and evidence of a criminal conduct and hand the case over to the financial authority in the scope of conduct covered by fiscal criminal law. The above is possible only where the conduct constituting a criminal offence defined in the criminal provisions of a different statute and belonging to the competence of the Police simultaneously fulfils the elements of a fiscal crime and petty offence (Article 134 § 5 FPC).

(4) In reference to the powers of the Police in proceedings in relation to a fiscal criminal offence, it must be noted that they include the right to prepare an indictment if investigation of the offence is conducted in the less formal mode of inquiry (*dochodzenie*). On the other hand, the Police does not have the authority to impose protective measures under Article 22 § 3 FPC available in fiscal criminal

offences, even if the Police itself conducts the investigation into a fiscal crime or petty offence.

The Police's powers include the application of the *in-absentia* mode of proceedings when investigating either a fiscal criminal offence or a fiscal petty offence. However, the decision issued in this respect must be approved by a prosecutor if it refers to a fiscal criminal offence (Article 175 § 1 FPC second sentence).

A prosecutor conducting the prosecutor's own investigation (a more solemn, formal investigation referred to as *śledztwo*) may only entrust the Police, in cases referred to in Article 151a § 2(2)–(3) FPC, with specific activities in the investigation, which do not include presenting, amending or supplementing the charges or closing the investigation. In cases in which the use of the formal investigation is the prosecutor's decision, the prosecutor may entrust the Police with the entire conduct of the proceedings or a specific scope thereof or specific activities therein, on the basis of Article 151b § 2 FPC first sentence in conjunction with Article 118 § 1(5) FPC.

(5) In investigations in cases of fiscal criminal offences, the powers of the Police are accentuated in such a way that the Police may either refuse to open new proceedings or close existing proceedings where the perpetrator's single conduct fulfils the elements of a fiscal petty offence and a criminal offence, and criminal proceedings in the case of the latter have already been concluded with a final and unappealable conviction (Article 151 § 1 FPC).

On the other hand, the Police, as well as the Military Police and the Border Guard Service, do not have the authority to issue penalty notices due to the lack of a specific statutory authorisation. This should be viewed in a negative light because the prosecution of minor fiscal petty offences by the Police, the Military Police or the Border Guard Service would mean more expedited and less costly proceedings. I would recommend adding a provision authorising the Police, the Military Police and the Border Guard Service to issue penalty notices. An alternative solution would be to amend Article 136 § 1 FPC as follows: 'Proceedings by penalty notice shall be conducted by a financial investigative authority or an authorised representative thereof or a non-financial investigative organ; such proceedings shall not be barred by the prior commencement of an investigation.' This amendment, therefore, would consist in the deletion of the phrase, 'where a specific provision so provides'.

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PARTICIPATION OF THE POLICE IN INVESTIGATION OF FISCAL CRIMES AND PETTY OFFENCES

Summary

This article attempts to acquaint the reader with the activities of the Police as a non-financial investigative organ in fiscal criminal cases falling within the Police's area of competence determined by the subject matter. The composition of this contribution reflects two topics. The first concerns the tasks of the Police, its competence determined by the subject matter, and

the scope and manner of exercising its powers in fiscal criminal cases, with special emphasis placed on operational-exploratory activities and operational control (surveillance). The other topic focuses on the powers of the Police in the investigation, with differences related to fiscal criminal offences and fiscal petty offences. The article is summarised with conclusions.

Keywords: Police, powers, investigation, fiscal crimes, fiscal petty offences

UDZIAŁ POLICJI W POSTĘPOWANIU PRZYGOTOWAWCZYM W SPRAWACH O PRZESTĘPSTWA I WYKROCZENIA SKARBOWE

Streszczenie

Niniejszy artykuł stanowi próbę przybliżenia udziału Policji jako niefinansowego organu postępowania przygotowawczego w postępowaniu przygotowawczym w sprawach o przestępstwa skarbowe i wykroczenia skarbowe, ujawnione w zakresie jej właściwości rzeczowej. Publikacja składa się z dwóch obszarów tematycznych. Pierwszy stanowią rozważania dotyczące zadań i właściwości rzeczowej Policji oraz zakresu i sposobu wykonywania uprawnień Policji w sprawach o przestępstwa skarbowe i wykroczenia skarbowe, ze szczególnym uwzględnieniem dokonywania przez nią czynności operacyjno-rozpoznawczych i stosowania kontroli operacyjnej. Drugi obszar tematyczny został poświęcony uprawnieniom Policji w postępowaniu przygotowawczym wraz z ich podziałem na te przysługujące jej zarówno w sprawach o przestępstwa skarbowe, jak i w sprawach o wykroczenia skarbowe. Artykuł kończą wnioski.

Słowa kluczowe: Policja, uprawnienia, postępowanie przygotowawcze, przestępstwa skarbowe, wykroczenia skarbowe

PARTICIPACIÓN DE POLICÍA EN LA FASE DE INSTRUCCIÓN EN CAUSAS POR DELITOS Y FALTAS FISCALES

Resumen

El presente artículo es una prueba de aproximar el papel de policía como órgano no financiero de la fase de instrucción en la fase de instrucción en causas por delitos fiscales y faltas fiscales descubiertos en el marco de su competencia material. La publicación consta de dos partes temáticas. La primera incluye consideraciones sobre el papel y competencia material de policía y el ámbito y forma de ejecución de las facultades de policía en causas por delitos fiscales y faltas fiscales, teniendo en cuenta en particular las diligencias de operación y de reconocimiento y el control de operación. La segunda parte consiste en los derechos de policía en la fase de instrucción en causas por delitos fiscales y por faltas fiscales. El artículo termina con conclusiones.

Palabras claves: policía, derechos, fase de instrucción, delitos fiscales, faltas fiscales

УЧАСТИЕ ПОЛИЦИИ В ПОДГОТОВИТЕЛЬНОМ ПРОИЗВОДСТВЕ ПО ДЕЛАМ О НАЛОГОВЫХ ПРЕСТУПЛЕНИЯХ И ПРАВОНАРУШЕНИЯХ

Аннотация

В статье рассматривается участие полиции в качестве нефинансового процессуального органа в проведении подготовительного производства по делам о налоговых преступлениях и правонарушениях, обнаруженных в рамках ее материальной компетенции. Работа состоит из двух тематических разделов. В первом разделе обсуждаются задачи и материальная компетенция полиции, а также объем и порядок осуществления ею своих полномочий по делам о налоговых преступлениях и правонарушениях. Особое внимание уделено проведению оперативно-розыскных мероприятий и осуществлению оперативного контроля. Второй раздел посвящен объему полномочий полиции в ходе подготовительного производства. В частности, проводится различие полномочий полиции по делам о налоговых преступлениях и по делам о налоговых правонарушениях. В конце статьи приводятся выводы автора.

Ключевые слова: полиция; полномочия; подготовительное производство; налоговые преступления; налоговые правонарушения

BETEILIGUNG DER POLIZEI AM ERMITTLUNGSVERFAHREN BEI STEUERSTRAFTATEN UND STEUERORDNUNGSWIDRIGKEITEN

Zusammenfassung

In diesem Beitrag wird versucht, die Beteiligung der Polizei als nichtfinanzieller Ermittlungsbehörde an Ermittlungsverfahren wegen Steuerstraftaten und Steuerordnungswidrigkeiten darzustellen, die im Rahmen der sachlichen Zuständigkeit der Polizei festgestellt wurden. Die Publikation deckt zwei Themenbereiche ab. Im ersten werden Überlegungen zu den Aufgaben und der sachlichen Zuständigkeit der Polizei sowie zum Umfang und zu den Modalitäten für die Ausübung der polizeilichen Befugnisse bei Steuerstraftaten und Steuerordnungswidrigkeiten angestellt, wobei der Schwerpunkt auf die Ermittlungstätigkeiten und die operative Kontrolle durch die Polizei gelegt wird. Der zweite Themenbereich ist den Befugnissen der Polizei im Ermittlungsverfahren gewidmet, mit einer Trennung in die Befugnisse, die der Polizei jeweils bei Steuerstraftaten und bei Steuerordnungswidrigkeiten zur Verfügung stehen. Am Ende des Beitrags werden entsprechende Schlussfolgerungen gezogen.

Schlüsselwörter: Polizei, polizeiliche Befugnisse, Ermittlungsverfahren, Steuerstraftaten, Steuerordnungswidrigkeiten

PARTICIPATION DE LA POLICE AUX PROCÉDURES PRÉPARATOIRES EN CAS DE DÉLITS ET INFRACTIONS FISCAUX

Résumé

Cet article tente de présenter la participation de la police en tant qu'organe non financier de procédures préparatoires à la procédure préparatoire en cas de délits fiscaux et d'infractions fiscales révélées dans le cadre de sa compétence d'attribution. La publication comprend deux

domaines thématiques. Le premier consiste en des considérations concernant les tâches et la compétence d'attribution de la police ainsi que la portée et la manière d'exercer les pouvoirs de la police en cas de délits fiscaux et d'infractions fiscales, avec un accent particulier sur l'exercice des activités opérationnelles et d'enquête et l'application du contrôle opérationnel. Le deuxième domaine thématique était consacré aux pouvoirs de la police dans la procédure préparatoire ainsi qu'à leur séparation entre ceux auxquels elle a droit, tant en cas de délits fiscaux qu'en cas d'infractions fiscales. L'article se termine par des conclusions.

Mots-clés: Police, autorisations/pouvoirs, procédure préparatoire, délits fiscaux, infractions fiscales

PARTECIPAZIONE DELLA POLIZIA ALLE INDAGINI NEI PROCEDIMENTI PER REATI TRIBUTARI E PER CONTRAVVENZIONI TRIBUTARIE

Sintesi

Il presente articolo costituisce un tentativo di far conoscere da vicino la partecipazione della Polizia in quanto autorità di indagine non finanziaria alle indagini nei procedimenti per reati tributari e per contravvenzioni tributarie, emersi nell'ambito della sua competenza materiale. La pubblicazione è suddivisa in due ambiti tematici. Il primo è costituito dalle riflessioni riguardanti i compiti e la competenza materiale della Polizia e l'ambito e la modalità di attuazione dei diritti della Polizia nei procedimenti per reati tributari e per contravvenzioni tributarie, con particolare attenzione alle attività investigative e di sorveglianza operativa messe in atto dalla Polizia. Il secondo ambito tematico è dedicato ai diritti della Polizia nelle indagini, facendo distinzione tra i diritti che le spettano nei procedimenti per reati tributari da quelli che le spettano nei procedimenti per contravvenzioni tributarie. L'articolo si conclude con le conclusioni.

Parole chiave: Polizia, diritti, indagini, reati tributari, contravvenzioni tributarie

Cytuj jako:

Tużnik M.R., *Participation of the Police in investigation of fiscal crimes and petty offences [Udział policji w postępowaniu przygotowawczym w sprawach o przestępstwa i wykroczenia skarbowe]*, „Ius Novum” 2020 (14) nr 4, s. 100–118. DOI: 10.26399/iusnovum.v14.4.2020.39/m.r.tuznik

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