

# PARTICIPATION OF THE MILITARY POLICE IN FISCAL PENAL PROCEEDINGS

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## 1. MILITARY POLICE TASKS AND *RATIONE MATERIAE* JURISDICTION

The Military Police, apart from the Border Guard, the Police, the Internal Security Agency and the Central Anticorruption Bureau (Article 53 §38 and Article 118 §1(4) to (6) and §2 Fiscal Penal Code<sup>1</sup>), are a non-financial preparatory proceeding body.

The Military Police constitute a selected and specialised service that is part of the Armed Forces of the Republic of Poland. Their position in the state system was defined this way in Article 1 para. 1 Act of 24 August 2001 on the Military Police and military order bodies<sup>2</sup> and in Article 3 para. 7 Act of 21 November 1967 on general obligation to defend the Republic of Poland<sup>3</sup>.

The scope of the Military Police tasks was determined in the Act on the Military Police. They consist in (1) ensuring compliance with the military discipline; (2) protecting public order in the areas and facilities of military units and in public places; (3) protecting human life and health and military property against attempts to infringe those interests; (3a) conducting antiterrorist operations in accordance with the Act of 10 June 2016 on antiterrorist operations<sup>4</sup> in areas or in facilities belonging to organisational units of the Ministry of National Defence or supervised or administered by those organisational units; (4) detecting offences and misdemeanours, including fiscal ones, committed by persons referred to in Article 3

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<sup>1</sup> Act of 10 September 1999: Fiscal Penal Code, uniform text, Journal of Laws [Dz.U.] of 2017, item 2226; hereinafter also: FPC.

<sup>2</sup> Uniform text, Journal of Laws [Dz.U.] of 2016, item 1483, as amended; hereinafter: Act on the Military Police.

<sup>3</sup> Uniform text, Journal of Laws [Dz.U.] of 2017, items 1430 and 2217.

<sup>4</sup> Journal of Laws [Dz.U.] of 2016, items 904 and 1948.

para. 2, revealing and prosecuting perpetrators of them, revealing and protecting evidence of those offences and misdemeanours; (4a) carrying out analyses of professional soldiers' property declarations and providing the Minister of National Defence with conclusions concerning those issues; (5) preventing the commission of offences and misdemeanours by persons referred to in Article 3 para. 2 and other pathological phenomena, especially alcoholism and drug addiction in the Armed Forces; (6) cooperating with the Polish and foreign bodies and services responsible for security and public order and military police forces; (7) combating natural disasters, extraordinary threats to the environment and eliminating their consequences as well as active participation in search, rescue and humanitarian operations aimed at protecting life, health and property; (8) performing other tasks determined in other provisions (Article 4 para. 1 Act on the Military Police).

According to the doctrine, the Military Police tasks may be classified as three basic groups:

- 1) Investigative activities: (a) conducting criminal proceedings within the scope of and in accordance with the binding provisions of the Criminal Code,<sup>5</sup> the Criminal Procedure Code<sup>6</sup> and the Fiscal Penal Code; (b) conducting explanatory proceedings in cases of misdemeanours, including fiscal ones;
- 2) Surveillance operations: (a) detection of offences and misdemeanours, including fiscal ones, as well as their perpetrators and evidence of those offences and misdemeanours; (b) conducting searches for people, objects and classified documents;
- 3) Crime scene examination: (a) protecting venues and events; (b) protecting crime scenes and evidence of the commission of offences and misdemeanours, including fiscal ones, in order to use it in proceedings; (c) supervising the protection of military property, especially armament and weapons storage.<sup>7</sup>

The Military Police *ratione materiae* jurisdiction was established, unlike in case of other non-financial preparatory proceeding bodies, following the criterion concerning a perpetrator and not the type of committed act. The Military Police conduct preparatory proceedings in cases of fiscal offences and misdemeanours that are subject to military courts' jurisdiction, committed by persons referred to in Article 53 §36 FPC, i.e. by soldiers defined as persons actively serving in the armed forces, except homeland territorial defence service dispatched on demand and soldiers and civilian personnel of foreign armed forces staying in the territory of the Republic of Poland, provided their fiscal offences and misdemeanours are connected with the performance of their professional duties (Article 134 §1(4) FPC in conjunction with Article 53 §36 FPC).

It should be mentioned that the range of people who are under the Military Police jurisdiction in cases of fiscal offences and misdemeanours laid down in Act

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<sup>5</sup> Act of 6 June 1997: Criminal Code, uniform text, Journal of Laws [Dz.U.] of 2017, item 2204; hereinafter: CC.

<sup>6</sup> Act of 6 June 1997: Criminal Procedure Code, uniform text, Journal of Laws [Dz.U.] of 2017, item 1904; hereinafter: CPC.

<sup>7</sup> B. Pacek, *Żandarmeria Wojskowa*, Toruń 2016, p. 94; M. Rozmus (ed.), *Żandarmeria Wojskowa: informator*, Legionowo 2014, pp. 18, 23 and 31.

on the Military Police is much broader than that determined in Article 53 §36 FPC. Article 3 para. 2 Act on the Military Police stipulates that the Military Police have jurisdiction over: (1) soldiers actively serving in the armed forces; (2) soldiers who are not active but wear a uniform and military badges; (3) employees of military units; (4) people staying in the military units' areas and facilities; (5) people other than those referred to in subparas. (1) to (4) who are subject to military courts' adjudication or if other provisions stipulate so; (6) people who are not soldiers if they cooperate with people referred to in subparas. (1) to (5) in the commission of a prohibited act carrying a penalty or if they commit acts posing threat to military discipline or acts against life or health of a soldier or military property; (7) soldiers and civilian personnel of foreign armed forces staying in the territory of the Republic of Poland in connection with the performance of their professional duties, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.

According to such a formulation of jurisdiction, in case a person referred to in Article 4 para. 1(4) and defined in Article 3 para. 2 Act on the Military Police commits whatever offence or misdemeanour, the Military Police are entitled to conduct proceedings, which excludes not only the jurisdiction of financial but also other non-financial preparatory proceeding bodies, regardless of the fact which body has revealed the commission of a given criminal act. As a result, any body detecting a punishable fiscal act committed by a person referred to in Article 53 §36 FPC should immediately refer the case to the Military Police.<sup>8</sup> T. Razowski draws attention to the fact that the exclusive jurisdiction of the Military Police in the discussed category of cases also results in admissibility of referring a case to the Military Police in a situation when another body (financial or non-financial preparatory proceeding one) just suspects a perpetrator but the suspicions are not sufficient to present charges. The author points out that in such a case, it should be remembered that too premature reference of a case may harm the dynamics of proceedings because the final determination that a perpetrator does not match the features laid down in Article 53 §36 FPC will cause the loss of the Military Police entitlements to conduct the case and an unavoidable necessity to refer it to another competent body.<sup>9</sup> In H. Skwarczyński's opinion, an interrogation of a person referred to in Article 53 §36 FPC by a body other than the Military Police or a prosecutor for military matters should be exceptionally admissible before the decision to present charges, provided that there are conditions for developing such a decision in accordance with Article 308 §2 CPC in conjunction with Article 312(1) CPC in conjunction with Article 113 §1 FPC. Admissibility of that step, although it concerns an entity that is under a military court's jurisdiction, results from the nature of the

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<sup>8</sup> M. Kołdys, *Rola i zadania niefinansowych organów postępowania przygotowawczego*, Prokuratura i Prawo 2017, No. 3, p. 113. Thus also: H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej w postępowaniu karnym skarbowym*, Wojskowy Przegląd Prawniczy No. 3–4, 2001, p. 34, and T. Razowski, [in:] P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy. Komentarz*, Warsaw 2017, p. 1203.

<sup>9</sup> T. Razowski, [in:] P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy...*, p. 1203; H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej...*, p. 35.

case requiring immediate response. In such a situation, a prosecutor for military matters should issue a decision to present charges within five days or, refusing to do so, discontinue proceedings against the person interrogated (Article 308 §3 CPC in conjunction with Article 657 §4 CPC in conjunction with Article 113 §1 FPC).<sup>10</sup>

## 2. MILITARY POLICE ENTITLEMENTS IN CASES OF FISCAL OFFENCES AND MISDEMEANOURS COMMITTED BY SOLDIERS

The Military Police entitlements in cases concerning soldiers are limited in nature because of the fact that the financial preparatory proceeding bodies specialise in fiscal offence and misdemeanour preparatory proceedings. The fact that the Military Police must notify a prosecutor for military matters, who has exclusive rights to file an indictment to a military court, about the initiation of preparatory proceedings (Article 134 §3 FPC), regardless of the category of a prohibited act (Article 121 §3 FPC), is an example of that limitation. A prosecutor for military matters has been granted the status of a public prosecutor in proceedings concerning fiscal offences and misdemeanours before a garrison military court or in cases concerning fiscal offences before a district military court. The analysis of Article 121 §3 FPC results in a conclusion that the development, filing and support of an indictment before a garrison or district military court is an exclusive prerogative of a prosecutor for military matters. Due to the fact that the discussed proceedings are conducted in a standard mode (Article 646 CPC in conjunction with Article 113 §1 FPC), the Military Police do not have the right to develop such an indictment. On the other hand, the Military Police conducting an investigation can develop an indictment in a fiscal misdemeanour case (Article 325a §1 CPC in conjunction with Article 312(1) CPC in conjunction with Article 113 §1 FPC); however, a prosecutor for military matters must approve of that indictment and file it to a military court (Article 331 §1 CPC in conjunction with Article 657 §4 CPC in conjunction with Article 113 §1 FPC). As a result, the Military Police cannot be a party before a court or appeal, while the Police and the Border Guard have been granted such rights in case of fiscal misdemeanours (Article 121 §2 FPC in conjunction with Article 134 §1(1) and (2) FPC).<sup>11</sup>

On the other hand, the Military Police are privileged in case of a jurisdiction dispute between them and financial preparatory proceeding bodies. Then, the Military Police conduct preparatory proceedings and the whole case should be referred to them because of the *ratione materiae* jurisdiction (Article 135 §3 FPC).<sup>12</sup>

It is worth mentioning that common courts or military courts adjudicate in cases of fiscal offences and misdemeanours. The regulation is laid down in Article 115 FPC and assumes separation of jurisdiction between common courts and military

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<sup>10</sup> H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej...*, p. 35.

<sup>11</sup> *Ibid.*, p. 39.

<sup>12</sup> J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy. Komentarz*, Warsaw 2014, p. 781.

courts. The latter adjudicate in cases concerning fiscal offences and misdemeanours committed by people referred to in Article 53 §36: (1) during or in connection with the performance of professional duties within the area of a military facility or the place of residence, for the detriment of the armed forces or with the infringement of an obligation resulting from their military service; (2) abroad, during the use or stay of the Armed Forces of the Republic of Poland abroad, in accordance with the Act of 17 December 1998 on the rules of use and stay of the Armed Forces of the Republic of Poland abroad<sup>13</sup> (Article 115 §1a FPC). A garrison military court is the first instance court in cases of fiscal offences and misdemeanours (Article 115 §3(1) FPC and Article 116 §1 FPC). On the other hand, in cases of fiscal offences committed by soldiers holding the rank of a major or higher, a district military court has jurisdiction (Article 115 §3(2) FPC in conjunction with Article 654 §1 CPC).<sup>14</sup> Thus, a garrison military court adjudicates misdemeanour cases, regardless of a perpetrator's rank (*argumentum ex Article 115 §3(2) FPC a contrario* in conjunction with Article 115 §3(1) FPC). A military court maintains its jurisdiction over a soldier who has finished military service (Article 116 §1 sentence 3 FPC).<sup>15</sup>

The provisions of the Fiscal Penal Code pay much attention to the issue of fiscal misdemeanours committed by soldiers. The linguistic interpretation of Article 116 §1 sentence 1 FPC suggests that criminal liability of persons referred to in Article 53 §36 FPC and their disciplinary liability for the same act may overlap. It is emphasised in literature that proceedings in such cases may be conducted one after another and are not an obstacle to one another. It reflects the principle of independence of criminal liability for fiscal misdemeanours from disciplinary liability.<sup>16</sup>

As J. Zagrodnik rightly states, in Article 116 §1 FPC, the legislator in general does not eliminate mutual influence, *sui generis* interaction between proceedings concerning criminal liability for a fiscal misdemeanour and disciplinary liability proceedings. In the author's opinion, the provisions of Article 116 §1 sentence 1 FPC support this stand because they constitute an obligation of immediate notification of a prosecutor for military matters or a garrison military court about the results of the disciplinary proceedings and disciplinary penalties imposed. The same can be said about the regulation under §4, which makes it possible to abandon criminal prosecution in case of a fiscal misdemeanour and refer to a competent superior to impose a penalty laid down in military disciplinary regulations if, in the opinion of a garrison military court, and before a prosecutor for military matters files an indictment, it is sufficient response to a fiscal misdemeanour.<sup>17</sup> As H. Skwarczyński

<sup>13</sup> Uniform text, Journal of Laws [Dz.U.] of 2014, item 1510.

<sup>14</sup> T. Razowski, [in:] P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy...*, pp. 1076–1077; T. Grzegorzczak, *Kodeks karny skarbowy. Komentarz*, Warsaw 2009, p. 486.

<sup>15</sup> H. Skwarczyński, *Problematyka postępowania w sprawach o wykroczenia i wykroczenia skarbowe popełniane przez żołnierzy*, *Wojskowy Przegląd Prawniczy* No. 3, 2002, p. 131.

<sup>16</sup> J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy. Komentarz*, Warsaw 2016, p. 589; T. Razowski, [in:] P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy...*, p. 1079; Z. Gostyński, *Komentarz do kodeksu karnego skarbowego*, Warsaw 2000, p. 32; H. Skwarczyński, *Problematyka postępowania w sprawach...*, p. 131.

<sup>17</sup> J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy...*, 2016, p. 589.

emphasises, the Military Police conducting a fiscal investigation can suggest that a prosecutor for military matters could finish the proceedings this way.<sup>18</sup>

The regulation is connected with Article 17 para. 2(3) Act of 9 October 2009 on military discipline,<sup>19</sup> where a soldier's disciplinary liability, inter alia for a fiscal misdemeanour, is referred to, provided that a court or a prosecutor, or another body entitled to adjudicate in those cases, files a motion to a military unit commander or head of a civilian institution to impose a disciplinary penalty.<sup>20</sup>

The Military Police entitlements to conduct a fiscal investigation against a person under the jurisdiction of military courts (Article 53 §36 FPC) are marginalised in a situation when a perpetrator of a prohibited act applies for permission to voluntarily incur liability because then the case must be mandatorily referred to a financial preparatory proceeding body (Article 134 §4 FPC). A perpetrator has the right to apply for such permission, about which he should be informed before the first interrogation. The Fiscal Penal Code imposes an obligation on a financial preparatory proceeding body to provide this information (Article 142 §2 FPC). However, it is assumed in the doctrine<sup>21</sup> that also non-financial preparatory proceeding bodies, including the Military Police, have that duty. Still, it is not necessary to inform a perpetrator about this right in a situation when *in concreto* there are negative conditions for the application of such permission (Article 17 §2(1) and (2) FPC). In case the negotiation phase fails or if a court, although a financial preparatory proceeding body files a motion to give the permission, refuses it and refers the case to a financial preparatory proceeding body (Article 148 §6 FPC), the latter should refer the case back to the Military Police because the former reference of the case in which a perpetrator is a "military" person to a financial preparatory proceeding body has been extraordinary in nature.<sup>22</sup>

Analysing Article 116 §2 FPC, one can notice a similar limitation to the Military Police entitlements in a fiscal penal procedure. The content of this provision suggests that in proceedings concerning a fiscal misdemeanour, a penalty notice application mode is also possible. It can be applied to soldiers actively serving in the armed forces. The Military Police are not a body entitled to impose a fine in the form of a penalty notice. The Regulation of the Council of Ministers of 22 February 2017 amending the Regulation on imposing fines in the form of penalty notices<sup>23</sup> grants such entitlements only to financial preparatory proceeding bodies, i.e. employees of

<sup>18</sup> H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej...*, p. 38.

<sup>19</sup> Uniform text, Journal of Laws [Dz.U.] of 2017, item 2024.

<sup>20</sup> H. Skwarczyński, *Problematyka postępowania w sprawach...*, pp. 131–132; T. Grzegorzczuk, *Kodeks karny skarbowy...*, p. 491.

<sup>21</sup> Thus: M.R. Tużnik, *Postępowania szczególne w postępowaniu karnym skarbowym*, Warsaw 2013, p. 270; by this author, *Postępowanie w przedmiocie udzielenia zezwolenia na dobrowolne poddanie się odpowiedzialności w postępowaniu karnym skarbowym*, *Ius Novum* No. 1, 2012, p. 82; H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej...*, pp. 36–37; by this author, *Uprawnienia Straży Granicznej w postępowaniu o przestępstwa i wykroczenia skarbowe*, *Wojskowy Przegląd Prawniczy* No. 3, 2003, pp. 101–102; also by this author, *Udział Policji w postępowaniu karnym skarbowym*, *Przegląd Policyjny* No. 3, 2001, p. 115; I. Zgoliński, *Dobrowolne poddanie się odpowiedzialności w prawie karnym skarbowym*, Warsaw 2011, p. 130.

<sup>22</sup> H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej...*, pp. 36–37.

<sup>23</sup> Journal of Laws [Dz.U.] of 2017, item 401.

tax offices, employees and officers of the Customs-Revenue Service (Służba Celno-Skarbowa) performing their duties in customs-revenue offices and employees and officers of the Customs-Revenue Service performing the duties of the National Revenue Administration in organisational units of the office of the minister for public finance (§2 Regulation).

I support the opinion that the above-presented legislative solution is erroneous. Granting non-financial preparatory proceeding bodies, including the Military Police, the right to penalise fiscal misdemeanours would make the examination of cases in a penalty notice proceeding mode faster and more economical.

I propose *de lege ferenda* to introduce a provision granting the Military Police, the Police and the Border Guard such rights. An alternative solution would be to adopt the following wording of Article 136 §1 FPC: "A financial preparatory proceeding body or its authorised representative as well as a non-financial preparatory proceeding body shall conduct penalty notice proceedings; the former initiation of preparatory proceedings shall not constitute an obstacle thereto". Thus, the amendment to the provisions would consist in the repeal of the phrase "when a special provision stipulates so".<sup>24</sup>

Consequently, in a situation when a perpetrator of a fiscal misdemeanour turns out to be a soldier actively serving in the armed forces and the case qualifies for the penalty notice mode, a financial preparatory proceeding body may impose a penal notice (payable in cash or by bank transfer). However, when a soldier refuses to accept a penal notice or fails to pay the fine imposed in this mode, a financial preparatory proceeding body should notify a prosecutor for military matters about the fact that the soldier has committed a fiscal misdemeanour (Article 116 §3 FPC).

In case the Military Police detect a fiscal misdemeanour that can be punished with the application of the penalty notice mode, in H. Skwarczyński's right opinion, a perpetrator should be asked whether he accepts a penalty notice. If his answer is positive, the Military Police should refer the case to a competent financial preparatory proceeding body with a motion to impose a penal notice on the soldier being the perpetrator of a fiscal misdemeanour. Approving of the author's opinion, one cannot agree that the detection of a fiscal misdemeanour by a non-financial preparatory proceeding body should close the path to a fast solution within a penal notice mode and cause the need to conduct the whole proceedings.<sup>25</sup>

The detection of a fiscal misdemeanour committed by a soldier actively serving in the armed forces requires that a prosecutor for military matters should be notified (Article 116 §3 sentence 1 FPC). The situation connected with the application of a penal notice towards a perpetrator is the only exception, unless a perpetrator refuses to accept a penal notice or fails to pay it on time (Article 116 §3 sentence 2 FPC).

A financial preparatory proceeding body may notify a prosecutor for military matters about the commission of a fiscal misdemeanour by a soldier actively serving in the armed forces and also in the case referred to in Article 133 §2 FPC before, having protected the evidence, it refers the case to the Military Police.

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<sup>24</sup> See, M.R. Tużnik, *Postępowania szczególne...*, p. 330.

<sup>25</sup> H. Skwarczyński, *Uprawnienia Żandarmerii Wojskowej...*, p. 37.

The Military Police are also subject to the obligation of notification referred to in Article 116 §3 FPC. Their notification is linked with the issue of a decision on the initiation of an investigation and sending the decision to a prosecutor for military matters (Article 134 §3 FPC). The notification can be made in the form of a separate letter informing a prosecutor for military matters about the detection of a fiscal misdemeanour committed by a soldier actively serving in the armed forces. However, the notification of a prosecutor for military matters in the form of a motion to punish a soldier developed by the Military Police sent to a prosecutor for military matters, who might approve of it and file it to court, is inadmissible.<sup>26</sup>

Proceedings in cases of fiscal misdemeanours committed by persons referred to in Article 53 §36 FPC are carried out following general rules laid down in the Fiscal Penal Code with the exceptions characteristic of military jurisdiction and those laid down in Article 116 §§1 to 4 FPC (Article 116 §5 FPC). As a result, proceedings in the discussed category of cases are subject to the provisions regulating fiscal penal proceedings before common courts with the exception of differences laid down in statute for cases under the jurisdiction of military courts, of which, first of all, in cases of fiscal misdemeanours, those that result from the content of Article 116 §§1 to 5 FPC should be taken into account and next those differences that are contained in the further part of the Fiscal Penal Code (Article 121 §3, Article 134 §1(4) and §3 and Article 135 §3 FPC).<sup>27</sup>

### 3. PROSECUTOR FOR MILITARY MATTERS' SUPERVISION OF PREPARATORY PROCEEDINGS CONDUCTED BY THE MILITARY POLICE IN CASES CONCERNING FISCAL OFFENCES AND MISDEMEANOURS

A prosecutor for military matters is a body superior to the Military Police in cases concerning fiscal offences and misdemeanours (Article 53 §39a FPC).

According to M. Kołdys, the supervision of fiscal penal proceedings undertaken by a prosecutor for military matters, who is superior to the Military Police, can be also inferred from other provisions of the Criminal Procedure Code and the Fiscal Penal Code, in particular Article 326 CPC and Article 113 §1 FPC. The former deals with a prosecutor's supervision of preparatory proceedings conducted by a procedural body in connection with criminal cases, and the latter concerns the application of the provisions of the Criminal Procedure Code by analogy in the course of an investigation or inquiry in cases of fiscal offences or misdemeanours. As far as this is concerned, only terminology is changed. The Criminal Procedure Code determines a prosecutor's supervision of preparatory proceedings and the Fiscal Penal Code uses a phrase: a body superior to a preparatory proceeding body. In addition, it should be emphasised that, as far as a prosecutor for military matters

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<sup>26</sup> *Ibid.*, pp. 37–38.

<sup>27</sup> L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy...*, 2016, p. 594; P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy...*, p. 1080.



is concerned, the legal grounds for the supervision of activities performed by the Military Police are found in Article 657 §4 CPC. The provision defines the concept of a military prosecutor as “a prosecutor of a common organisational unit of the prosecution office who performs activities in an organisational unit for military matters”.

The analysis of the two codes draws attention to some other differences consisting in the fact that the Fiscal Penal Code uses a term “a prosecutor for military matters” (Article 53 §39a FPC) and the Criminal Procedure Code “a military prosecutor” (Article 657 §4 CPC). The terminology adopted in FPC and CPC concerns, in fact, a prosecutor for military matters’ formal supervision of the procedural activities performed. As a body superior to a non-financial preparatory proceeding one, a prosecutor for military matters has a series of rights resulting directly from the FPC provisions. He can authorise a non-financial preparatory proceeding body to conduct preparatory proceedings or order the performance of specified, indicated procedural activities (Article 151b §2 FPC), as well as reserve the right to perform whatever procedural activity on his own, especially one that requires the issue of a decision, connected with presenting, changing or supplementing charges, claiming ancillary liability and changing the decision on this liability or closing the proceedings (Article 151b §3 FPC). Moreover, a prosecutor for military matters has the right to prolong preparatory proceedings supervised (Article 153 §§1 and 3 FPC) and can overtake preparatory proceedings and conduct them in person (Article 122 §1(2) FPC).<sup>28</sup>

The above facts indicate that by analogy to preparatory proceedings conducted in accordance with the CPC provisions, a prosecutor for military matters has all the entitlements to shape the directions of preparatory proceedings in cases of fiscal offences and misdemeanours by issuing orders, decisions and recommendations, and this way to perform real supervision of them.<sup>29</sup>

A prosecutor for military matters also deals with complaints about decisions issued in proceedings conducted by the Military Police (Article 167 §2 FPC). As J. Zagrodnik rightly notices, the jurisdiction of a prosecutor for military matters and, in cases stipulated in statute, of a military court to deal with complaints about decisions of the Military Police results from the application by analogy, in accordance with the Fiscal Penal Code, of Article 465 §3 CPC in conjunction with Article 646 CPC and Article 113 §1 FPC. As a result of that observation, it can be stated that the provision of Article 167 §2 FPC is a reflection of the statutory *superfluum*.<sup>30</sup>

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<sup>28</sup> M. Kołdys, *Rola i zadania niefinansowych...*, pp. 117–118; T. Razowski, [in:] P. Kardas, G. Łabuda, T. Razowski, *Kodeks karny skarbowy...*, p. 608.

<sup>29</sup> M. Kołdys, *Rola i zadania niefinansowych...*, pp. 118–119.

<sup>30</sup> J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy...*, 2014, p. 1008.

#### 4. ENTITIES AUTHORISED TO PERFORM PROCEDURAL ACTIVITIES OF THE MILITARY POLICE

The issue of determining an entity performing procedural activities of non-financial preparatory proceeding bodies is closely connected with a prosecutor for military matters' supervision of preparatory proceedings in fiscal penal cases conducted by the Military Police. The wording of Article 118 §3 FPC clearly suggests that those bodies' authorised representatives perform their procedural activities. Approving of M. Kołdys' opinion, I believe that the above-mentioned wording indicates, at the same time, that the delegation to conduct preparatory proceedings is not the *ex lege* entitlement of all officers of the above-mentioned bodies but only those who have been granted special authorisation.<sup>31</sup> J. Zagrodnik presents a different opinion and states that Article 118 §3 FPC concerns a general authorisation to perform activities at the preparatory stage of fiscal penal proceedings resulting from the systemic provisions regulating non-financial preparatory proceeding organs' activities. At the same time, the author does not exclude a possibility of granting special authorisation to conduct preparatory proceedings in a particular case.<sup>32</sup>

The analysis of Article 118 §3 FPC leads to a conclusion that the discussed "authorisation" is a special delegation of authority for a body's particular representative. The Fiscal Penal Code and implementing regulations based on it do not cover the discussed authorisation. That is why, internal regulations and decisions of those bodies are applicable to the form, content and method of granting it.

It should be pointed out that the documents are not published and available to the public. Thus, it seems likely that they should contain, inter alia, an indication of a person entitled to issue/annul the authorisation, formal requirements for an officer/soldier who is to be authorised, the possible scope of the authorisation and its specimen.

In case of the Military Police, the Commander-in-Chief of the Military Police is the body that grants authorisation. On the other hand, in case of the Police, i.e. a much bigger formation than the Military Police, the Chief Commander of the Police is not the body that grants authorisation. The territorial body of the entity or a police officer authorised by it is one; but it is not every police officer.<sup>33</sup> It is hard to imagine a situation in which the Chief Commander of the Police issues personal authorisation for all police officers assigned by their superiors to conduct preparatory proceedings in cases concerning fiscal offences and misdemeanours. Thus, it should be assumed that heads of given organisational units, that is e.g. county, city, voivodeship forces, or in case of the Border Guard, commanders of branches, checkpoints and divisions of the Border Guard issue such authorisation.<sup>34</sup>

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<sup>31</sup> M. Kołdys, *Rola i zadania niefinansowych...*, p. 114.

<sup>32</sup> J. Zagrodnik, [in:] L. Wilk, J. Zagrodnik, *Kodeks karny skarbowy...*, 2014, p. 595.

<sup>33</sup> See, the Supreme Court resolution of 27 March 2003, I KZP 3/03, OSNKW 2003, No. 3–4, item 29 with a critical gloss by Z. Świda, *Glosa do uchwały SN z dnia 27 marca 2003 r., sygn. I KZP 3/03*, Prokuratura i Prawo No. 10, 2003, p. 101 ff.

<sup>34</sup> M. Kołdys, *Rola i zadania niefinansowych...*, pp. 114–116.

As it has been indicated, in accordance with Article 151 §2 FPC, a prosecutor for military matters may authorise a non-financial preparatory proceeding body to conduct the whole or part of preparatory proceedings or to order the performance of specified, indicated procedural activities. Thus, this is a prosecutor who determines the scope of his authorisation for a given representative of a non-financial body and it is his decision, in fact, that constitutes the grounds for issuing the authorisation decision. At the same time, a prosecutor for military matters' decision determines the temporal scope of the authorisation; it is valid until the conclusion of preparatory proceedings in case it is granted to a non-financial body to conduct them as a whole, or until the indicated investigative activities are completed, e.g. protecting documents or interviewing witnesses, etc.<sup>35</sup>

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<sup>35</sup> *Ibid.*, pp. 116–117.

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## PARTICIPATION OF THE MILITARY POLICE IN FISCAL PENAL PROCEEDINGS

### Summary

The article is an attempt to explain the participation of the Military Police as a non-financial preparatory proceeding body in fiscal penal proceedings, namely in cases concerning fiscal offences and misdemeanours detected within the scope of their *ratione materiae* jurisdiction. The article pays much attention to the Military Police entitlements in the fiscal penal procedure and the assessment of the scope of those rights in the currently binding legal state. The author also formulates *de lege ferenda* proposals probably constituting suggestions for the legislator to extend the jurisdiction of the Military Police. The article also discusses the issue connected with determining an entity performing procedural activities of the Military Police, i.e. the rights of their authorised representatives. In addition, the analysis covers the issue of a prosecutor for military matters' supervision of preparatory proceedings conducted by the Military Police in cases concerning fiscal offences and misdemeanours.

Keywords: Military Police, prosecutor for military matters, entitlements, soldiers, fiscal offences, fiscal misdemeanours

## UDZIAŁ ŻANDARMERII WOJSKOWEJ W POSTĘPOWANIU KARNYM SKARBOWYM

### Streszczenie

Niniejszy artykuł stanowi próbę przybliżenia udziału Żandarmerii Wojskowej jako niefinansowego organu postępowania przygotowawczego w postępowaniu karnym skarbowym, a ściślej w sprawach o przestępstwa i wykroczenia skarbowe ujawnione w zakresie jej właściwości rzeczowej. W publikacji sporo uwagi poświęcono omówieniu uprawnień Żandarmerii Wojskowej w procesie karnym skarbowym wraz z oceną zakresu tych uprawnień w obecnie obowiązującym stanie prawnym. Sformułowano wnioski *de lege ferenda*, stanowiące być może wskazówkę dla ustawodawcy w kierunku rozszerzenia kompetencji Żandarmerii Wojskowej. Poruszono także zagadnienie związane z określeniem podmiotu wykonującego czynności procesowe Żandarmerii Wojskowej, czyli uprawnień jej upoważnionych przedstawicieli. Ponadto rozważaniami objęto problematykę nadzoru sprawowanego przez prokuratora do spraw wojskowych nad postępowaniem przygotowawczym, prowadzonym przez Żandarmerię Wojskową w sprawach o przestępstwa i wykroczenia skarbowe.

Słowa kluczowe: Żandarmeria Wojskowa, prokurator do spraw wojskowych, uprawnienia, żołnierze, przestępstwa skarbowe, wykroczenia skarbowe

#### Cytuj jako:

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