The postulate, which ought to accompany the legislator while creating the content of acts of law, calling for creation of comprehensible and coherent law, should not be considered as requiring any additional comment. The imperative to introduce to the legal act language the solutions which are tested, coherent, simple, and at the same time efficient and effective to the greatest extend should be recognised as an indispensable, in this respect, determinant influencing the final effect of a law-making process. During the process of law creation, it would pay to take account of the Latin maxim written on a column of the Supreme Court in Warsaw – *In legibus magis simplicitas quam difficultas placet*, which professes the specific value of the simplicity of law. Such simplicity is also intrinsically connected with a deeply philosophical expression originating from a medieval philosopher William of Ockham, according to whom one should not
multiply entities beyond necessity. Being guided by such type of directives in the process of constructing law standards should lead to simple and system-coherent solutions as well as ones not burdened with unnecessary regulation, which often introduces complications in the application of law. It is also worth emphasising that taking them into consideration by the legislator would allow for creation of good law that is well written, well applied and also properly executed, as well as efficient and effective.

Unfortunately, reading the content of many acts of law, especially those created and amended within the last dozen or so years, quite often leads to the ascertainment that while making them the legislator lost the ability to create clear and simple standard content. The undesired effect of “law inflation” consists of its internal contradiction, casuistry, but also of the lack of effectiveness and efficiency. Such deficiencies are visible while comparing the regulations of the Act of 06 June 1997 — Code of Criminal Procedure, to the Act of 10 September 1997 — Penal Fiscal Code.

On 17 October 1999 the PFC regulations became effective, where the codification of penal fiscal law was performed for the first time. Although autonomy of the introduced act was its feature manifested in independent regulation of substantive, procedural and executive issues, in the procedural scope only it was based to a significant degree on the regulations of the CCP, including general reference to the regulations contained therein. Such a way, continued even today, of constructing the model of penal fiscal procedure is a representation of the codification directive based on the idea of “equipping” the PFC with legal institutions already tested on the ground of criminal procedure, which actually leads to a justified purpose, i.e. to properly unify the regulations of both codes by establishing the CCP regulations the core of the legal form of the PFC. This way of shaping the procedure framework in the PFC seems to be the right solution considering, while making the law, such aims as its simplicity and coherence. In such context one should assess as desirable the content of the provision of Article 113(1) of the PFC, in the light of which fiscal offence and fiscal petty offence case proceedings, the regulations of the CCP apply respectively unless the provisions of the PFC provide otherwise. Consequently, the legislator, following in this way the rule of unification of procedures in criminal cases, caused the transposition of a range of regulations contained in the CCP to the field of PFC. Such a legislative measure shaped the rule of subsidiarity, defined by literature, determining that in a penal fiscal suit, the regulations of the CCP apply respectively, with amendments resulting from the PFC. In other words, fiscal offence

4 Consolidated text, Dz.U., 2021, items 534, 1023; hereinafter: CCP.
5 Consolidated text, Dz.U., 2021, items 408, 694; hereinafter: PFC.
procedures as well as fiscal petty offence procedures are to great extent of subsidiary nature towards the common criminal procedure.

Assessing the soundness of the legislative assumption aiming at unification of both procedures, and influencing the subsidiary dimension of the penal fiscal procedure, it is hard to miss out the point that it fully fits into the postulates of creating the law which is simple, coherent and lacks unnecessary regulations. Since the legislator, while forming the standards of penal fiscal procedure, reaches for tested regulations functioning on the ground of a related field of penal procedure, it is obvious that such a measure has to lead to reduction in introducing new regulations with a simultaneous use of the jurisdiction and doctrine attainment in the process of interpretation and application of binding regulations. One should, however, notice that although the reading of the PFC regulations gives grounds for thinking that the legislator is in principle consistent while adopting the solutions from the CCP, it is also hard not to note that in an unjustified way contrary solutions were introduced to the PFC striking not only the simplicity and coherence of the law but also its efficiency and effectiveness. Such a situation takes place in the preparatory stage of the procedure in fiscal offence cases, and more precisely in the scope of the prosecutor’s departing from the rule of supervision over the proceedings carried out in the form of investigation, which belongs to the competence of the fiscal bodies of the preparatory procedure. What is more, some unjustified differentiations exist also in the matter of regulations rationing the prosecutor’s supervision both over the investigation and the inquiry belonging to the competence of fiscal and non-fiscal bodies of the preparatory procedure, and also referring only to the inquiry entrusted to be run by non-fiscal bodies.

In the above-outlined context one should point out that the present model of prosecutor’s supervision in the PFC stipulates its obligatory nature in the case of all inquiries and investigations lead by preparatory proceeding non-fiscal bodies and its incidental occurrence only in enumeratively listed procedure situations, which are referred to in the regulation from Article 151c(2) PFC, functioning in investigations led by preparatory proceedings fiscal bodies. Also, otherwise than in the CCP, in the PFC, Article 151a(1) of the PFC indicates that a preparatory proceedings fiscal body is a body holding the inquiry under the supervision of the prosecutor. Whereas in an investigation, the PFC, similarly to the CCP, ordains non-prosecutor bodies as entities holding this form of procedure, mentioned for example in Article 53(37) of the PFC, over which, however, supervision is held mainly by the superior bodies listed in Article 53(39) of the PFC. Such regulation, granting primacy to preparatory proceedings fiscal bodies in holding penal fiscal procedures in offence related cases, stems from their specialisation and the specific nature of the matter that is the subject of preparatory proceedings. As it is generally emphasised

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in the literature on the subject, because of the implied in this matter competences of these bodies and the special matter connected with penal fiscal law, it is them who should conduct procedures of this type, which is explicitly confirmed in the regulations of the PFC, which grant them for example the right to institute preparatory proceedings in the form of inquiry\(^9\). While in the case of the field of standards referring to inquiries such assumption seems optimal, in the case of the field connected with investigation, where the director of fiscal administration chamber, not the prosecutor, generally supervises the procedure, it seems to be incorrect.

Therefore one cannot fail to notice that depriving the preparatory proceedings conducted in the form of investigation in fiscal offence cases in the PFC of the universality of the prosecutor’s supervision is contrary to the Act of 28 January 2016 — Law on the Prosecution Service\(^10\), and more exactly to the rule expressed in Article 3(1)(1) of the cited act stating that it is a prosecutor’s duty, among other things, to conduct or supervise preparatory proceedings in criminal cases and to hold the position of a public prosecutor before courts. Such a duty is the emanation of the prosecutor’s statutory task in the scope of prosecuting offences and guarding the rule of law constituting its formal guarantee\(^11\). Justified doubt arises by forming penal fiscal procedure regulations in such a way, which actually makes it impossible to be followed in the scope of majority of preparatory proceedings supervised mainly by a locally competent director of fiscal administration chamber.

What is more, the unjustified disparity of the regulation of the matter of supervision over an investigation in the PFC leads to the lack of internal coherence of its provisions, and also to the lack of their consistency with the regulations of the CCP. An example of such a type is visible in the institution of transferring the case to the prosecutor in order to supplement the preparatory proceedings because of existing essential deficiencies of such proceedings, whose removal by the court would cause significant difficulties. Consequences of the obligation of such procedure by the court regulated in Article 344a of the CCP, obviously in the case of the appearance of essential deficiencies in an investigation conducted by preparatory proceedings fiscal bodies supervised by their superior authorities, charge against the prosecutor although (s)he did not have real influence on its course. What is even more significant, as a result of the case returning to the prosecutor, it is her/him who is responsible for conducting the investigation and (s)he is obliged, according to Article 344b of the CCP, to make a decision in the subject of its substantial completion.

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\(^10\) Consolidated text, Dz.U., 2019, item 740.

Thus, one should admit that in the discussed case, we deal with charging the prosecutor’s authority with negative consequences for the mistakes made without her/his participation in an investigation by a preparatory proceedings fiscal body. Such solution can hardly be assessed as coherent. The cause of its functioning is the lack of universality of prosecutor’s supervision and related regulation provided for in Article 122 of the PFC containing a range of legislative defects, including the lack of reference to Article 344a of the CCP and Article 344b of the CCP, which would allow for proper forming of the institution of returning the case to the preparatory proceedings.

Concentrating on extensive, though not without lacunae, normative content of the regulation from Article 122 of the PFC, including referrals to the regulations of CCP as well as transferring prosecutor’s authority to preparatory proceedings fiscal bodies and their superior authorities, it should be emphasised that it is the consequence of general exclusion of prosecutor’s supervision in an investigation. The regulation presents the legislator’s belief that granting prosecutor’s authority to the above-mentioned bodies will optimally assure the fulfilment of preparatory proceeding goals and will allow them to effectively support the prosecution before the court. Such legislator’s assumption, differing from the model of functioning of non-prosecutorial bodies in the CCP, seems to be erroneous, and also introduced in a way that brings complications and misunderstandings. The lack of the necessity of existence of standards contained in Article 122 of the PFC would be evident in the case of copying the solutions of supervision formed on the ground of the CCP to the PFC. But from this point of view, the above-cited regulation should be assessed as unnecessary normative “superstructure”.

As it was shown above, Article 122 of the PFC contains a range of legislative errors. An example emerges in the present paper in the form of irregularity in granting authority to preparatory proceedings fiscal bodies to apply security on property in § 1(1) of the above-cited regulation. At the same time the legislator in the same regulation, but in § 2, grants the same bodies with the right to request the prosecutor to apply security on property. In this respect doubts of interpretation nature arise, which refer to praxeological coherence and relation between both referrals, which, as it seems, cannot be removed in the way of interpretation of law.

Another exemplary defect characterising the regulation in Article 122(1) (1) of the PFC is a referral in this regulation to the whole content of Article 308(1) of the CCP. In this context, one should notice that the second sentence of Article 308(1) of the CCP describes the necessity to transfer the case in the form of an inquiry to the prosecutor, which obviously will not apply on the ground of an investigation conducted by preparatory proceedings.

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proceedings fiscal bodies and supervised by their superior authorities, to which the whole referral contained in Article 122 of the PFC refers.

One cannot either help pointing out to the legislator the totally unnecessary reference in Article 122(1)(1) of the PFC to the content of Article 336(1) of the CCP. The superfluity of this regulation results from the fact that in the PFC, autonomously in Article 155(4) of the PFC, the legislator constituted the authority for preparatory proceedings fiscal bodies to independently file a petition for conditional discontinuance of the proceedings. Therefore, the reference to Article 336(1) of the CCP discloses as duplication of the matter of this regulation, which also amounts to granting the same procedure prerogative to the bodies in question.

Leaving aside the issues referring to prosecutor’s marginal supervision over an investigation and procedural consequences connected with it, one should remember what was mentioned at the beginning of the paper, i.e. that the legislator did not avoid differentiations, unnecessary from the point of view of good law creating criteria, while designing the regulations concerning an inquiry. The difference in question concerns the competence to prolong the time limits of preparatory proceedings conducted as well as supervised by a prosecutor, and the authority creating the right to carry out the actions connected with submitting charges, changing or supplementing the charges during the inquiry appointed to be run by preparatory proceedings non-fiscal bodies.

Starting with the first of the outlined differences, one should refer to the content of Article 153(1) of the PFC. Having read this regulation, one can unquestionably state that it contains standards, autonomous on the ground of penal fiscal procedure, establishing a basic three-month long period of preparatory proceedings, both in the form of an investigation and an inquiry. Additionally, otherwise than in Article 311(2) of the CCP, this provision also regulates the rights to prolong this period up to one year in the case of conducting or supervising the investigation by a prosecutor or supervising the inquiry by this body, making the directly supervising prosecutor the competent one. Whereas prolonging, under Article 153(1) of the PFC, the basic period of investigation up to three months seems to be a proper solution in respect of very often complicated matter being the subject of preparatory proceedings, engaging the directly supervising prosecutor every time in the activity of prolonging the investigations supervised or conducted by a prosecutor as well as inquiries supervised by her/him constitutes an irrational solution. One should remember that, under Article 31(1)(5-8) of the Law on the Prosecutor’s Office act, a directly supervising prosecutor in the units that most frequently conduct preparatory proceedings — regional, district and provincial prosecutor’s offices — is their head or deputy head, or a director of a non-resident centre. Taking into consideration the range of responsibilities of the above-mentioned function, prosecutors and their workload, granting them the competences to prolong the above-mentioned investigations and inquiries supervised or conducted by a prosecutor subordinate
to them should be assessed as totally unjustified. Not only is there lack of strictly legal arguments in this scope having their grounds in proper transposing of solutions contained in Article 311(2) of the CCP, but also there are no arguments of system nature supporting such form of the institution in question. In practice, it leads to the situation where the head of the unit or the deputy has to prolong each, covering with its scope even the most insignificant factual or legal status (e.g. proceedings on the act from Article 62(2) of the PFC connected with the use of a single unreliable invoice), investigation supervised by a prosecutor. Apart from that, inquiries remaining under prosecutor’s supervision should be under this regulation prolonged for the period longer than three months but not longer than one year by a directly supervising prosecutor. This significant difference concerning the competence of the body prolonging procedure periods in proceedings in fiscal offence cases resulting from the incomprehensible lack of adopting the solutions accepted in this scope in Article 311(2) of the CCP process to be totally unjustified. For it is hard to understand why, otherwise than in the CCP, an ordinary prosecutor supervising such proceedings was deprived of the prerogative to perform a basic supervisory act which is their prolonging. Thus, one has to realise that often only after three months of an investigation or an inquiry such prosecutor will actually get to know the dossier of the proceedings 14. According to the content of Article 153(1) of the PFC in such a case, it will be necessary to hand it over to the head of the unit or their deputy with the purpose of making a decision of prolonging the proceedings. It is hard not to have the impression in such a case of illusoriness of the supervision by the prosecutor subordinate to his/her direct superior, who, under the above-mentioned regulation of the PFC, was in a sense incapacitated, procedure-wise, in the scope of taking a supervisory decision significant for the further course of proceedings.

Moving on to the issue connected with submitting charges, changing or supplementing the charges during the inquiry appointed to be run by preparatory proceeding non-fiscal bodies, it should be stated that it is puzzling when, on the ground of penal fiscal procedure, Border Guard, Police, Internal Security Agency and Central Anti-corruption Bureau are granted competence to carry out these actions. Such authority derives its power from the linguistic interpretation of the content of Article 151b(2 and 3) of the PFC. In the referred regulation the legislator indicated the scope of the prosecutor’s entrusting the inquiry (s)he instituted to, among others, the preparatory proceeding non-fiscal bodies. One should notice that in such situations the prosecutor may entrust such bodies with performing specific activities of the proceedings excluding activities connected with submitting, changing or supplementing the charges — 151b(2) of the PFC – or entrusting the inquiry in whole or in a specified scope (s) he may reserve any action for himself/herself, especially, among other

things, submitting, changing or supplementing the charges — 151b(3) of the PFC. Thus, in the case of instituting an inquiry by a prosecutor and entrusting it as a whole based on the above-cited regulation, without prior reservation by the prosecutor of the actions referring to submitting, changing or supplementing the charges, a non-fiscal body, e.g. the Police, will be authorised to perform such actions independently. Such ascertainment is confirmed in the content of Article 151b(2) of the PFC enacting a specific prosecutor’s enquiry determined with the person of the perpetrator. In this regulation the legislator expressly forbade assigning the authority of submitting, changing or supplementing the charges to preparatory proceeding bodies, including Border Guard, Police, Internal Security Agency and Central Anti-Corruption Bureau, which seems to confirm the thesis that such possibility exists in the other inquiries. Summing up the results of linguistic interpretation, which does not arise any doubt, one should state that the authority of submitting, changing or supplementing the charges awarded with the PFC regulations to preparatory proceeding non-fiscal bodies such as e.g. the Police, with their simultaneous secondary procedure position in the inquiry in comparison with fiscal bodies conducting the inquiry, constitutes a solution which lacks features of internal as well as external coherence. This way, a regulation was constituent, based on which, e.g. the Police not having the prerogative to institute an inquiry in a fiscal offence case, has such a prerogative to submit, change or supplement the charges in this procedure. What is more, this body, practically playing the main role and carrying out as a whole inquiries in general criminal procedure under the supervision of a prosecutor, under Article 311(1 and 2) of the CCP, is deprived of the right to institute such proceedings and to submit, change or supplement the charges herein. That is why it is surprising that in the last sphere of the procedure powers, the legislator created diversity on the ground of the PFC unjustified with circumstances of systemic or practical nature, diverging from model, in this scope, legal condition binding in CCP, granting the authority to create the status of a suspect in an inquiry to preparatory proceeding non-fiscal bodies.

Regardless of the above-outlined issues referring to a range of ambiguities on the procedural matter regulated with the provisions of the PFC, caused with the legislator’s departure from the supervisory solutions adopted on the ground of the CCP, one should also emphasise the issue extending beyond the frames of the PFC itself. Having stated that, it is worth mentioning that depriving the prosecutor of the general obligatory nature of supervision over an investigation in the PFC creates a problem in the scope of the possibility of applying the Act of 17 June 2004 — on complaint regarding infringement of the party’s right to examine the case in preparatory proceedings conducted or supervised by a prosecutor and court proceedings without unreasonable delay\textsuperscript{15}. Lodging a complaint is conditioned by the existence of a prosecutor’s supervision

\textsuperscript{15} Consolidated text, Dz.U., 2004, No. 179, item 1843.
in the specific procedure system, and such supervision, as it was indicated above, is of exceptional and incidental nature. Such condition results straight from the content of Article 1(1) of the above-mentioned act, which constitutes that it regulates the rules and mode of lodging and examining a complaint of a party whose right to examine the case without unreasonable delay was infringed as a result of actions or failure to act by the court or the prosecutor conducting or supervising the preparatory proceedings. Besides, the clear, as it would seem, wording of this regulation was confirmed by the interpretation conducted by the Supreme Court while passing a Resolution of 28 January 2016, where it was stated that a party’s right to lodge a complaint materialises on the ground of an investigation in fiscal offence cases in the instances indicated in Article 151c(2) sentence 1 of the PFC, so when the supervision over the investigation is granted by law or by the prosecutor taking it under supervision on the grounds of the decision taken at her/his discretion. Also, the Supreme Court recognised the extension of the period of investigation for over 6 months as the circumstance allowing for lodging a complaint, which on the ground of the legal status binding during passing the resolution was among the competences of a prosecutor, treating this action as initiating the supervision in the case. Nevertheless, as reading of the still binding resolution indicates, an investigation in the other cases is deprived of prosecutor’s supervision in the PFC, and what follows is a possibly occurring lengthiness of proceedings that cannot be alleged to this body. Undoubtedly as a result of rationing of the prosecutor’s supervision in an investigation contained in a marginal way in the PFC, the majority of cases of this category is deprived of court’s control of punctuality and correctness of the actions taken in order to produce a decision ending the proceeding of such type.

To summarise the above-presented deliberations, an ascertainment seems to be relevant that introducing by the legislator in the PFC a different regulation than in the CCP in the scope of prosecutor’s supervision over an investigation conducted by preparatory proceedings fiscal bodies does not fulfil the requirements of good law. One should assess in a similar way the differentiation of solutions in the cases referring to the matter of prolonging the periods in an investigation and an inquiry, as well as to submitting, changing or supplementing the charges in an inquiry itself on the grounds of the regulations of the PFC. A rational model of law creation is based on the assumption that there is a possibility of making ex ante findings referring to the efficiency of considered future legal solutions, and as a result, of assuring efficient law application. The assessment of normative content constructing the rules of prosecutor’s supervision in PFC allows to think that while creating them, the legislator did not take into account the directive of a rational model of law making. Introducing the differences in this subject they multiplied entities – models of supervision.

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17 Izdebski H, Elements..., op.cit., p. 296.
— beyond necessity in an unconcerned way, at the same time repeatedly creating incomprehensible and incoherent legal standards. Not preserving the simplicity of law led to creation of regulations that cause a lot of difficulties in the practice of their application, being at the same time contradictory to legal acts other than the Penal Fiscal Code. All of this obviously did not finally lead to guaranteeing the efficiency and effectiveness of these solutions. Because one cannot admit that for instance excluding a professional host of the preparatory stage, which a prosecutor undoubtedly is, from the supervision over an investigation contributed in any way to taking these criteria into consideration while creating good law.

References

13. Act of 17 June 2004 on complaint regarding infringement of the party’s right to examine the case in preparatory proceedings conducted or supervised by a prosecutor and court proceedings without unreasonable delay, consolidated text, Dz.U., 2004, No. 179, item 1843.
Keywords: clarity of law, good law, differentiation of solutions, coherence of law, Public Prosecutor’s supervision, Code of Criminal Procedure, Penal Fiscal Code

Summary: This article is an attempt to show the consequences of differences in regulations on Public Prosecutor’s supervision over proceedings as provided for by the Penal Fiscal Code and the Code of Criminal Procedure, from the perspective of good law characteristics. On the basis of selected regulations, the author attempts to demonstrate that the marginal supervision of the Public Prosecutor over the investigation in the penal fiscal proceedings as provided for in the legislation contradicts the clarity, coherence and effectiveness of law. The differentiation between solutions adopted in this respect gives rise to problems with normative regulations based on the Penal Fiscal Code and makes the regulations inconsistent with other legislation: the Act of 28 January 2016 — Law on the Prosecutor’s Office and the Act of 17 June 2004 — on complaint regarding infringement of the party’s right to examine the case in preparatory proceedings conducted or supervised by a prosecutor and court proceedings without unreasonable delay. Further, in the content of the article the author refers to selected legislation applicable also to investigation regulated by the penal fiscal proceeding regulations. They serve as an example to demonstrate the thesis that the differentiation introduced in this respect in the legislation is entirely unreasonable as compared to the related regulations of the Code of Criminal Procedure. The analysis of those regulations proves that there is no system-related or legal argumentation that would justify this kind of exceptions. In the conclusions drawn on the basis of the analyses carried out in the article, the author states that the introduction of different regulations in the Penal Fiscal Code and the Code of Criminal Procedure as regards the Public Prosecutor’s supervision over the investigation conducted by the financial authority responsible for preparatory proceedings and some exceptions in respect of investigations does not fulfil the requirements of good law.