



Dr Joanna Mucha-Kujawa
Institute of Law Studies of PAS
jmucha@inp.pan.pl

New Legal Status of State Attorney Office

Abstract

The purpose of the considerations hereinunder is an attempt to define a new, legal status of State Attorney Office (State Representation Office) of the Republic of Poland (RP), constituting – in theory – the completion of the construct of State Treasury as an administrator of public property, combining modernity and tradition in the area of counseling and state representation in court (for the purpose of litigation).

Against the background of the changes having been introduced, involving, in particular, extension of competences of State Attorney Office of RP, there appears a question if the model of state representation constructed in a centralized way – defined in trading as ‘model of traditional modernity’ will provide effective representation and protection of state property.

1. Nature and functions of State Attorney Office

In accordance with Polish tradition State Attorney Office has always been a completion of the construct of State Treasury as an administrator of public (state) property, Office which – with breaks – has performed the functions of institutional, legal representative (in court) of State Treasury in the form of a state office, modeled on Austrian solutions. To some extent its organization reminded of a law firm, composed of a body of lawyers (attorneys and legal advisors) with a special employee status¹.

The concept and construct of State Attorney Office (SAO) as a legal representative (in court) of state treasury (fiscus) is significantly influenced by the legal model of state treasury (fiscus) as an administrator of public property, determining the legal construct and the range of tasks and competences of SAO, as a specific state bar.

In theory, State Attorney Office of the Republic of Poland (SAO RP) as an institution with judicial, litigious and advisory functions in the area of the protection of public property largely remains in legal symbiosis with the construct of State Treasury (fiscus), symbolizing the state in private trading. Both legal institutions aim to guarantee efficient protection of state property interests in legal trading and are placed on the borderline of two regulatory methods – i.e. public (imperious) method and cooperative (non-imperious) one. Hence, not without a reason theoretical searching for a balance point has been raising constant controversy inspired not only by its juridical complexity, but also by dominance of one-sided point of view, determined by the preferred regulatory method².

In contrast to European, in particular, continental legal tradition, having been shaped since Roman times, according to which fiscus embodies state as a public law entity having by its very essence capacity in private law, in national doctrine fiscus (called State Treasury) as a special entity of private law, regardless of the fact that it is deprived of basic characteristics of a conventional private law entity (lack of legal entity's bodies, of statutes, of registered office, nor is it subject to entry in the public register of legal entities), but at the same time,

¹ S. Bukowiecki, *Prokuratoria Generalna Rzeczypospolitej Polskiej*, 'Gazeta Administracji i Policji Państwowej' 1924, No. 38, p. 806; Z. Cybichowski, *Encyklopedia podręczna prawa publicznego (konstytucyjnego, administracyjnego i międzynarodowego)*, vol. II, Warszawa [no release year], pp. 785–787; *Prokuratoria Generalna, 200 lat tradycji ochrony dobra publicznego*, ed. L. Bosek, Warszawa 2016, pp. 113.

² More about it – compare A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu Prokuraturii Generalnej RP jako instytucjonalnego zastępcy prawnego (procesowego) państwa (Skarbu Państwa) w obrocie prywatno-prawnym*, 'Studia Prawnicze' 2017, No. 1, pp. 23–56; A. Bierć, J. Mucha-Kujawa, *Teoretyczno-prawne poszukiwania sposobu 'oznaczenia' państwa w obrocie prywatno-prawnym*, 'Studia Prawnicze' 2016, No. 2, pp. 49–105.

in practice, it benefits, to some extent, from imperious instruments by shaping property relations of the state³. The dissonance mentioned above requires conducting harmonization and legislative activities taking into account European perspective⁴.

In national doctrine, in accordance with which the views on the status of State Treasury are still inconsistent, there is marked, however, evolution in the direction of treating State Treasury, being an equivalent of *fiscus* in European countries, as an entity of public law to ensure consistency of the concept of State Treasury on the basis of the entire law system but not only private law⁵.

The above mentioned direction of theoretical searching seems to harmonize with the development of national public law regulations in the area of functioning the State Treasury as a legal entity. Legislative practice clearly proves that State Treasury benefits, in legal trading, from instruments of public authority in a way proper for public law entities, and not private law persons⁶.

Manifestations of preference of State Treasury, which more and more extensively benefits from authority powers granted by the regulations of numerous statutes, undermine the myth of State Treasury as a private law person, which functions equally to a natural person as a private individual in private law trading. It guides national theoretical thought rightly in the direction of European solutions, treating *fiscus* (state treasury) as a public law entity which keeps authority powers to the extent necessary (typical of public law entities) and, hence, may perform in trading on the basis of relative equality with an individual⁷.

Completing the construct of State Treasury in the functional sphere, State Attorney Office has been directed to implement the function of specific statutory

³ A. Karczmarek, *O władczych uprawnieniach Skarbu Państwa*, 'Radca Prawny. Zeszyty Naukowe' 2015, No. 1 (2), pp. 144–162; J. Jacyszyn, *Wokół instytucji Skarbu Państwa*, 'Rejent' 1992, No. 10, p. 19.

⁴ *Zielona Księga. Optymalna wizja Kodeksu cywilnego w Rzeczypospolitej Polskiej*, ed. Z. Radwański, Warszawa 2006, p. 45.

⁵ Among many compare: N. Gajl, *Skarb Państwa*, Warszawa 1996, pp. 189–209; A. Całus, *Problematyka prawna Skarbu Państwa*, 'Biuletyn Rady Legislacyjnej' 1995, No. 6, pp. 12–37; C. Kosikowski, *Polskie publiczne prawo gospodarcze*, Warszawa 1998; R. Tupin, *Skarb Państwa w okresie reform i przemian własnościowych*, 'Przegląd Ustawodawstwa Gospodarczego' 1996, No. 4.

⁶ A. Karczmarek, *O władczych uprawnieniach...*, pp. 144.

⁷ P. Laband, *Das Staatsrecht des Deutschen Reiches*, Bd. 4, 4. neubearbeitete Auflage, Tübingen-Leipzig 1901, pp. 341–345; W. Mallmann, *Leitsätze des Berichterstatters über Schranken nichthoheitlicher Verwaltung*, [in:] *Verträge zwischen Gliedstaaten im Bundesstaat. Schranken nichthoheitlicher Verwaltung Aussprache zu den Berichten in den Verhandlungen der Tagung der deutschen Staatsrechtslehrer zu Köln vom 12. bis 15. Oktober 1960*, eds. H. Schneider, W. Schaumann, W. Mallmann, K. Zeidler, Berlin 1961, p. 207.

(legal) representation of State Treasury in legal trading⁸. In particular, it performs the function of a legal representative, especially – representative for the purpose of litigation of State Treasury and state legal entities before the national and international courts, as well as – the advisory function of state bodies in the area of legislative and property practice of the state.

2. Origin and evolution of State Attorney Office on the ground of Polish law

On the ground of Polish law, the beginnings of the institution of legal representation (for the purpose of litigation) of the state date back 19th century⁹, but the special development of this institution falls on the interwar period¹⁰.

The example for Polish, prewar legislator was constituted by centralized model of legal representation (for the purpose of litigation) of the state established in Austria in the form of a special institution – Financial State Attorney Office (*Finanzprokuratur*)¹¹ – established for legal advisory and representation for the purpose of litigation of the property interests (treasury) of the state¹² affecting European solutions in this matter at present times.

SAO RP, established on the ground of a decree dating the year 1919, aimed to ensure the state a uniform and high-standard legal protection¹³. That was intended to be a centralized office, in personal, administrative and economic

⁸ Cf. A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu ...*, p. 46.

⁹ State Attorney Office from the times of Polish Kingdom (Royal Resolution on the matter of establishment of State Attorney Office, Official Journal of Polish Kingdom, part 2, No. 8, pp. 116–139).

¹⁰ Decree on the matter of establishment of State Attorney Office of the Republic of Poland dating 7th February 1919, Dz. U. 1919, No. 14, item 181; The Act dating 31st July 1919 on the matter of establishment of State Attorney Office of the Republic of Poland, Dz. U. 1919, No. 65, item 390. Ordinance of the President of the Republic of Poland dating 9th December 1924 on the matter of the change of the system of State Attorney Office of the Republic of Poland, Dz. U. 1924, No. 107, item 967.

¹¹ Imperial Regulation dating 21st December 1850 on the matter of establishment of Treasury State Attorney Office, Official Journal No. 188 and Ministry Regulation dating 9th March 1898 on the matter of official instructions for c.k. Treasury State Attorney Office, Official Journal No. 41 dating 1898; Compare: J. Windakiewicz, *Zadania Prokuratury Generalnej i jej stanowisko w procesie cywilnym*, 'Głos Adwokatów' 1926/4, p. 117; J.J. Litauer, *Prokuratoria Generalna Rzeczypospolitej Polskiej*, 'Gazeta Sądowa Warszawska' 1920, No. 4, p. 27.

¹² Compare J. Mucha-Kujawa, *Ewolucja regulacji prawnej Prokuratury Generalnej w Polsce na tle rozwiązań austriackich*, 'Studia Prawnicze' 2012, No. 4, pp. 53; *Prokuratoria Generalna, 200 lat ...*, p. 114.

¹³ J. Sobkowski, *Podmioty gospodarki uspołecznionej jako strona procesu cywilnego*, Poznań 1960, p. 139.

matters directly subordinate to the President of the Ministers¹⁴, independent in performing its functions.

State Attorney Office was assigned many tasks which have not lost their importance at present times. First of all, SAO performed legal advice (e.g. issuing legal opinions at matters concerning legal and property interests of the state and of legal entities treated equally to State Treasury, as well as interests of state administration in general; expressing opinions – at the wishes of the Council of Ministers or individual ministers – about drafts acts (bills) and draft regulations from the legal, organizational and legislative technique point of view, and, in particular, from the point of view of private law, property and administrative interests of the State; substantive representation (e.g. cooperation with concluding legal contracts and with drawing up acts and legal documents on private law and property matters of the state and of legal entities treated equally to State Treasury); representation for the purpose of litigation (e.g. conducting legal disputes about legal and property interests of the State and of legal entities treated equally to State Treasury; representation for the purpose of litigation of public interests (in case of lack of competent bodies and State Attorney Office has been called by the authorities); representation of legal and property interests of State Treasury and of legal entities treated equally to State Treasury and interests of state administration in proceedings before courts of public law and administrative authorities). Representation for the purpose of litigation, performed by SAO RP, included all actions in civil proceedings before all courts and judicial authorities existing on the territory of the Republic of Poland, in litigious and out of dispute proceedings¹⁵.

The legal status of SAO RP was confirmed by the Act dating 31st July 1919 on the matter of the establishment of State Attorney Office of the Republic of Poland¹⁶, which actually copied the regulations about the construct of SAO RP defined in the decree dating 7th February 1919¹⁷, extending the representation for the purpose of litigation performed by SAO RP in such a way that it included the representation for the purpose of litigation in general on matters of property interests of the state and legal entities treated equally to the state, and, what is

¹⁴ Art. 5 Decree on the matter of establishment of State Attorney Office of the Republic of Poland dating 7th February 1919, Dz. U. 1919, No. 14, item 181.

¹⁵ More about it: J. Mucha-Kujawa, *Ewolucja regulacji prawnej ...*, pp. 54–55.

¹⁶ The Act dating 31st July 1919 on the matter of the establishment of State Attorney Office of the Republic of Poland, Dz. U. 1919, No. 65, item 390.

¹⁷ State Attorney Office was counted to 'central offices, extending its activity over all the territory of Poland, subordinate to the ministers, but having some degree of independence'. *Encyclopedia of the law being in force in Poland*, vol. I, No. II, *Ustrój władz administracyjnych państwowych i samorządowych*, ed. A. Peretiatkowicza, Poznań 1925, p. 21.

more, SAO RP was entrusted the duty of drawing up opinions on draft acts and draft regulations from the point of view of the protection of state interests¹⁸.

Transformations in the organizational field of the state, including passage of March Constitution¹⁹, caused reorganization of many state institutions. That process also comprised SAO RP, which resulted in the change of the structure of State Attorney Office of the Republic of Poland²⁰, including – subordination of the President of State Attorney Office and all State Attorney Office of the Republic of Poland to Minister of the Treasury (not as it was before to the Council of Ministers, wherein State Attorney Office still remained a separate office in relation to Minister of the Treasury²¹).

Ordinance of the President of RP dating 1924 maintained the competences of State Attorney Office of RP to perform legal defense of legal interests of the State to the widest extent possible²² (i.e. representation of the State in court proceedings and administrative proceedings), establishing State Attorney Office as an attorney of the State, appointed solely to represent widely understood Treasury in court²³. The range of activity of State Attorney Office of RP also included representation before administrative authorities, cooperation with concluding contracts, as well as legal advice. It, moreover, comprised both private law and public law interests of the State, defense of territory rights of the State, and of the rights and claims to foreign states resulting from international agreements and treaties²⁴.

Legal representation of the interests of the state (of public law and of private law character) performed by SAO RP comprised representation for the purpose of litigation at matters concerning property and public interests and rights of the state, including – all actions in civil proceedings before all courts existing

¹⁸ SAO RP was ‘so to say attorney of the state, i.e. counsel for the defense and legal advisor’ Z. Cybichowski, *Encyklopedia podręczna prawa publicznego* vol. II..., pp. 785–787. State Attorney Office was also defined as a government institution, defending in courts property rights of the state *Encyklopedia powszechna dla wszystkich*, ed. S. Lam, Warszawa [no release year], p. 597. Also compare J. Mucha-Kujawa, *Ewolucja regulacji prawnej*..., pp. 56–64.

¹⁹ The Act dating 17th March 1921 Constitution of the Republic of Poland (Dz. U. 1921, No. 44 position 267).

²⁰ Ordinance of the President of the Republic of Poland dating 9th December 1924 on the change of the structure of State Attorney Office of the Republic of Poland, Dz. U. 1924, No. 107, Item 967.

²¹ B. Markowski, *Administracja skarbowa w Polsce*, Warszawa 1931, pp. 118–119; C. Kosikowski, *Pozycja prawna Ministra Skarbu w Polsce międzywojennej*, ‘Finanse’ 1973, No. 8, pp. 55–69; J. Sobkowski, *Podmioty gospodarki społecznej*..., p. 144.

²² S. Ehrlich, *Rola Prokuraturii Generalnej w aparacie państwowym*, ‘Biuletyn Urzędniczy’ 1938, No. 5–6, p. 9.

²³ S. Gołąb, *Organizacja sądów powszechnych*, Kraków 1938, p. 103.

²⁴ L. Górniewicz, *Prokuratoria Generalna Rzeczypospolitej Polskiej*, ‘Śląsko-Dąbrowski Przegląd Administracyjny’ 1946, No. 11–12, p. 8.

on the territory of RP (before labor courts, arbitration courts), in litigious and out of dispute proceedings²⁵, as well as representation on property and public interests and rights of the state in proceedings before courts of public law and administrative authorities²⁶, issuing – at the wishes of state authorities – legal opinions at matters concerning property and public interests of the State, providing legal advice and cooperation with drawing up legal acts regarding rights and interests of the State.

The intention of the interwar legislator was to draw the widest possible borders of the activity of State Attorney Office, which resulted from the regulation defining the scope of activity of SAO RP, according to which SAO RP performed the defense of the interests of the State as an entity of public (international) law, and not the defense of the interests of the State as a private law entity, as well as from naming it State Attorney Office of the Republic of Poland²⁷.

The special legal status of State Attorney Office of RP manifested itself also on the procedural (in court) ground – the position of State Attorney Office in a civil lawsuit was privileged²⁸ (e.g. entities that SAO represented were exempt from court fees²⁹, they were waived the immediate enforceability of judgments³⁰, in cases in which SAO represented the state, the copy of the judgment with reasons was served on the parties by the court³¹), and the powers of SAO to act in accordance with its own convictions protected the interest of the state against instituting ungrounded and unreasonable cases.

In the ordinance there was copied, among others, included in the Act dating 1919, the principle of the responsibility of the President, the President of the Division, the Delegate and every officer of SAO for any material damage for State Treasury or for legal entities mentioned in the ordinance arisen as a result of gross negligence or obvious breach of official duties. Entities that contributed to arising material damage were obliged to compensation.

²⁵ S. Gołąb, *Organizacja sądów powszechnych...*, p. 104; E. Wengerek, *Obsługa prawna organów państwowych oraz jednostek gospodarki uspołecznionej*, Poznań 1967, p. 18.

²⁶ State Attorney Office took part in such proceedings in Poland and abroad as well as before foreign courts if it was granted the representation by administrative authorities appointed to the board or supervision over a particular legal entity or over a specific field of state administration.

²⁷ S. Ehrlich, *Rola Prokuratorii Generalnej...*, p. 9.

²⁸ J. Sobkowski, *Podmioty gospodarki uspołecznionej...*, pp. 144–145.

²⁹ Ordinance of the President of the Republic of Poland dating 24th October 1934, Provisions on court fees, Dz. U. 1934, No. 93, item 837.

³⁰ Ordinance of the President of the Republic of Poland dating 29th November 1930, Civil Proceedings Court, Dz. U. 1930, No. 83, item 651.

³¹ S. Gołąb, *Organizacja sądów powszechnych...*, pp. 105–106; J. Windakiewicz, *Zadania Prokuratury Generalnej...*, p. 122.

State Attorney Office existed in the form presented above up to 1951, when the change of economic system in the direction of planned economy caused the reconstruction of all legal and social system in Poland including performing legal protection of the state and its interests. State Attorney Office of RP, presenting centralized system of legal representation, was replaced by Office of Legal Representation³², and the representation of state entities was entrusted to its directors or representatives, which allowed independent activity of particular state entities and transition to deconcentration of the system of legal protection of the state³³.

3. Reactivation of State Attorney Office during the economic reconstruction of the system towards the market direction

Social and economic transformations in the end of the eighties, in particular, the transition from the system of planned economy to market economy, as well as numerous legal proceedings in privatization cases that took place in Poland after 1989, all that intensified interest in the problem of the models of protection of state property and state representation in private trading, including – undertaking discussion about establishing an institution aimed to ensure efficient protection of state property in private trading on the example of prewar State Attorney Office of the Republic of Poland.

Both in Parliament, as well as among the representatives of the doctrine there have been discussions over the scope of tasks, functions and the construct of the institution aimed to protect the state and its property. In particular, the idea behind it was to establish an institution connecting to Polish tradition, but intended to guarantee efficient protection of the state property and its

³² Decree dating 29th March 1951, Dz. U. 1951, No. 20, item 159.

³³ Decree dating 2nd June 1954 on representation in court of authorities, offices, institutions and state enterprises, Dz. U. 1954, No. 25, item 93. The reason for the abolition of the institution - State Attorney Office was the impossibility to 'reconcile organizational and economic independence of economic state entities in terms of the management of state property allocated to them in order to perform their planned tasks with the system of concentration of legal representation, limiting the independence of the activity of those entities on the important section of the protection of socialist state property (...) The system of concentration was supposed to be responsible for having influence on the weakening of responsibility of the director of that entity for the proper performance of all the entrusted tasks (...)'. J. Sobkowski, *Podmioty gospodarki uspołecznionej...*, p. 149.

representation in modern legal trading, especially, in the face of some pathological phenomena connected with the process of ownership transformations³⁴.

The Act³⁵, which ground constituted government draft act dating 16th September 2004³⁶, only partially restored centralized system of state protection and representation as State Attorney Office of State Treasury (incomplete, partial reactivation of the institution of central character), connecting to State Attorney Office of the Republic of Poland from the period of the Second RP and Austrian Financial State Attorney Office. At the same time, previous decentralized (dispersed) system of state property protection was maintained, which was based on the protection of state property by every entity administering an item of state property in the scope of its own tasks.

Reactivated State Attorney Office of State Treasury was intended to secure and defend the interests of State Treasury, to strengthen the rule of law and contribute to limit financial losses of the State³⁷, as well as – to standardize legal representation of State Treasury before national and international courts (performed up to 2005 in a decentralized way by different state bodies)³⁸.

Reactivated State Attorney Office of State Treasury, however, had the narrowest – in comparison to Polish regulations from the Second RP and Austrian

³⁴ T. Gruszecki, *Chodzi o funkcje czy o symbol? Nieporozumienia wokół Prokuraturii Generalnej*, 'Rzeczpospolita' 1998, No. 119 (22.05.1998); J. Wierzbicki, *Problematyka zastępstwa procesowego Skarbu Państwa. Projekt ustawy o Prokuraturii Generalnej*, 'Przegląd Ustawodawstwa Gospodarczego' 1998, No. 11, p. 20; R.A. Tupin, *Geneza reaktywowania Prokuraturii Generalnej w III Rzeczypospolitej* [in:] *Prawo i Państwo. Księga jubileuszowa 200-lecia Prokuraturii Generalnej Rzeczypospolitej polskiej*, ed. L. Bosek, Warszawa 2017, pp. 102–109.

³⁵ The Act dating 8th July 2005 on State Attorney Office of State Treasury (Dz. U. 2016, item 1313 and 1579).

³⁶ Government draft act dating 16th September 2004, parliamentary printing No. 3259. After 1989 there were numerous draft acts on state attorney office, e.g. parliamentary draft act on State Attorney Office, which came in on 19th March 1998, was passed on 8th January 1999, but finally was vetoed by the President of RP, draft act of the parliamentary club of Polish Peasants' Party dating 14th June 2002 (parliamentary printing No. 1834) and draft act of the parliamentary club of League of Polish Families dating 19th March 2004 (parliamentary printing No. 2791). Also compare: M. Bajor-Stachańczyk, J. Lipski, P. Krawczyk, *O Prokuraturii Generalnej w Polsce – historia i teraźniejszość*, 'Biuro Studiów i Ekspertyz' 2003, No. 984, pp. 3–6; J. Wierzbicki, *Problematyka zastępstwa procesowego...*, pp. 18–21; R. Mastalski, *Opinia o projekcie ustawy o Prokuraturii Generalnej Rzeczypospolitej Polskiej (draft version May 1998)*, 'Przegląd Legislacyjny' 1998, No. 1–2, pp. 204–206; A. Szajkowski, *Opinia o projekcie ustawy z dnia 12.03.1999r. o Prokuraturii Generalnej Rzeczypospolitej Polskiej*, 'Przegląd Legislacyjny' 1999, No. 2, pp. 101–105; J. Frąckowiak, *O projekcie ustawy o Prokuraturii Generalnej Skarbu Państwa (draft version 17th August 2004)*, 'Przegląd Legislacyjny' 2004, No. 5(45), pp. 84–86.

³⁷ M. Przychodzki, R. Tupin, *Wprowadzenie* [in:] *Komentarz do ustawy o Prokuraturii Generalnej Skarbu Państwa*, ed. M. Dziurda, Warszawa 2006, p. 12.

³⁸ Reasons to draft act on General State Attorney Office of State Treasury dating 16th September 2004, printing No. 3259, point I, General reasons, p. 1.

regulations – scope of competences, i.e. the scope of tasks and the scope of activity. It was deprived of many competences, which SAO RP used to have traditionally, in particular as to representation for the purpose of litigation in administrative cases and to representation for the purpose of litigation of state legal entities, which in accordance with the Act on the principles of exercising powers inherited on to State Treasury³⁹, belonged to the scope of the concept of ‘state treasury’⁴⁰. Moreover, SAO of State Treasury (ST) never represented state legal entities. It was not until 2015 that SAO ST obtained the competences to perform (to a limited extent) representation for the purposes of litigation of state legal entities⁴¹.

Statutory tasks of General State Attorney Office of State Treasury mentioned in a narrow way, impeding comprehensive protection of state property they were: firstly – performing representation for the purpose of litigation limited to civil matters, i.e. to representation before courts of general jurisdiction and Supreme Court⁴². That meant exclusion from the representation for the purpose of litigation in administrative matters, and also – in criminal cases, even if State Treasury was the victim; secondly - issuing opinions in a narrow range⁴³, leaving, in principle, out of range of the competences of State Attorney Office the appraisal of legal actions even of considerable value or of draft of contracts on legal advice; thirdly - issuing draft normative acts at matters concerning rights or interests of State Treasury, as well as regulating proceedings before courts, tribunals and other adjudicating bodies, which brought positive results because government legislator did not only obtain a helpful assessment as regards expected social – economic effects of draft regulations, but also the litigation risk assessment.

The limitation of the competences of SAO ST to performing only representation before courts of general jurisdiction and before Supreme Court with exclusion of administrative cases impeded, in a significant way, the protection of state property in the so – called reprivatization cases taking place before administrative courts, but also prevented jurisprudence impact on administrative

³⁹ Dz. U. 1996, No. 106, item 493 with amendments.

⁴⁰ The concept State Treasury was used in divergent meanings: differently in the Act on General State Attorney Office of State Treasury and in the Act on the principles of exercising powers inherited on to State Treasury. Also compare: J. Mucha-Kujawa, *Ewolucja regulacji prawnej ...*, pp. 74–75.

⁴¹ The Act dating 5th August 2015 on the change of the act on General State Attorney Office of State Treasury and some other laws, Dz. U. 2015, Item 1635.

⁴² Compare M. Dziurda, *Prokuratoria Generalna i jej kompetencje* [in:] *Sine Ira et Studio. Księga jubileuszowa dedykowana Sędziemu Jackowi Gudowskiemu*, eds. T. Ereciński, P. Grzegorzczak, K. Weitz, Warszawa 2016, pp. 1249.

⁴³ The scope of the subject of the opinions issued by SAO was narrower than those issued on the ground of prewar regulations. S. Płaza, *Historia prawa w Polsce na tle prawnoporównawczym. Okres międzywojenny*, part 3, Kraków 2001, p. 728.

proceedings as a result of which were issued administrative decisions in violation of the law, favoring reprivatization claims' traders⁴⁴.

Such partially restored State Attorney Office of State Treasury did not have the possibility to mediate effectively between two or more state legal entities in order to reach an out-of-court agreement, to issue amicable opinions. Arbitration dispute resolution at matters concerning state property was not in the centre of competences of State Attorney Office of State Treasury.

Against narrow scope of competences of reactivated SSAO ST in national literature there have shown up varied positions as to the nature (type) of legal representation being at matters here. In functional terms SAO ST was treated as an organizational (statutory) representative of State Treasury similarly to the bodies of every legal entity⁴⁵, or it was recognized as a special organizational structure (institution) with statutory defined function in the sphere of representation⁴⁶ or as an institutional representative (proxy) of State Treasury at all matters in which State Treasury is represented with taking procedural (legal) actions before court⁴⁷.

⁴⁴ *General State Attorney Office shall defend and anticipate. Interview with prof. L. Boskiem, the President of General State Attorney Office of RP, 'Rzeczpospolita' dating 2.01.2017, <http://www.rp.pl/Prawnicy/301029972-Prokuratoria-Generalna-SP-ma-bronic-i-przewidywac.html/#ap-5>*

⁴⁵ Z. Radwański, *Prawo cywilne – część ogólna*, 9. edition, Warszawa 2007, p. 192; *System Prawa Prywatnego, Prawo cywilne – część ogólna*, vol. I, ed. M. Safjan, Warszawa 2007, p. 1059; A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu...*, pp. 26; also cf. J. Mucha-Kujawa, *Teoretycznoprawne aspekty przedstawicielstwa organizacyjnego jako pragmatycznego sposobu reprezentacji osoby prawnej*, 'Studia Prawnicze' 2017, No. 3, pp. 149–170.

⁴⁶ W. Szydło, *Przedstawicielstwo ustawowe jako forma reprezentacji*, 'Studia Prawnicze' 2008, No. 2, p. 120.

⁴⁷ H. Pietrzkowski, *Czynności procesowe zawodowego pełnomocnika w sprawach cywilnych*, Warszawa 2010, pp. 51–53.

4. Full return to traditional model of State Attorney Office of the Republic of Poland as a central legal representative (for the purpose of litigation) of State Treasury (fiscus) with wide advisory and litigious (proceedings) competences

From the point of view of the protection of public good narrow scope of tasks of SAO ST from 2005 was criticized and undoubtedly contributed – together with transformation of economic centre of the state, including decentralization of the institution of State Treasury⁴⁸ and strengthening the competences of state organizational entities in terms of management of state property – to return to traditional model of State Attorney Office as a central legal representative (for the purpose of litigation) of State Treasury with wide protective competences made to European measure and needs of contemporary state⁴⁹. It was finally decided to come back to traditional model of SAO ST of the Republic of Poland as a central legal representative of State Treasury with wide advisory and proceedings competences⁵⁰.

New, however, to a large extent traditional model of State Attorney Office of RP has found expression in the Act dating 15th December 2016⁵¹, which changing the name from State Attorney Office of State Treasury to State Attorney Office of the Republic of Poland changed the scope of its tasks as well. New model of SAO RP connects ‘tradition with modernity’ in the field of advice and legal representation, which rules have been ‘consolidated and improved’ in

⁴⁸ The construct of State Treasury was changed pursuant to the Act dating 16th December 2016 on the regulations introducing the act on the principles of state property management (Dz. U. 2016, item 2260) in the direction of decentralization of State Treasury (among others liquidation of the Ministry of State Treasury). Those changes were accompanied by strengthening of the centralized way of legal representation (for the purpose of litigation) as State Attorney Office.

⁴⁹ K. Głogowski, R. Tupin, *Prokuratoria Generalna logicznym...*; J. Mucha-Kujawa, *Ewolucja regulacji prawnej...*, pp. 65.

⁵⁰ More about it: A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu ...*, pp. 47–50.

⁵¹ The Act dating 15th December 2016 on General State Attorney Office of the Republic of Poland, Dz. U. 2016, item 2261 annulled the Act on 8th July 2005 on General State Attorney Office of State Treasury (Dz. U. 2016 position 1313 with amendments). Come back to traditional model of SAO RP coincided in time with the bicentennial jubilee of establishing General State Attorney Office of RP and was accompanied by publishing the commemorative book – *Prokuratoria Generalna, 200 lat tradycji ochrony dobra publicznego*, ed. L. Bosek, Warszawa 2016.

order to increase the quality of legal protection and to reduce the costs of legal support⁵².

It is worth highlighting that it was of utmost importance just the change of the name of the institution from State Attorney Office of State Treasury to State Attorney Office of the Republic of Poland, determining the competences and the main goal of functioning State Attorney Office of RP – representation and protection of property interests of the state (as an entity of public law, which because of its public law character also acts in private trading managing public property). The aforementioned change indicates that the range of competences of State Attorney Office of RP (SAO RP) has been significantly extended – in particular in terms of representation of State Treasury in civil proceedings, i.e. before courts of general jurisdiction and Supreme Court, as well as before administrative courts, representation of legal entities, there have also been introduced changes as to the organization of SAO RP.

With reference to traditional tasks of State Attorney Office from the inter-war period but in a modern perspective (similar to the tasks of contemporary Financial State Attorney Office of Austria), the legislator extended, in a very far-reaching way the competences of SAO RP in relation to previous state. SAO RP as a ‘state law firm’ has become the main (central) legal advisor and representative for the purpose of litigation in national and international cases with limited possibility to reach for legal advice from private law firms or to appoint ‘an external representative’. Only in special cases if there is needed the knowledge of foreign law or of the procedure of a third country, SAO RP may entrust representation in court or performing specific legal actions to an ‘external’ representative. In the course of international proceedings SAO RP may also request (commission) opinions, analyses or reports to people knowledgeable in a particular field⁵³.

In the new institutional and legal form SAO RP shall protect the rights and interests of the Republic of Poland in a ‘safe and effective’ way, including State Treasury and state property not belonging to State Treasury, and its competences are divided into obligatory and not obligatory ones.

In terms of representation performed by SAO RP the legislator moved away from the previous narrow definition of ‘representation for the purpose of

⁵² In accordance with the reasons to draft act on General State Attorney Office of the Republic of Poland dating 22nd November 2016 (printing No. 1055, p. 1) the act takes into account ‘the achievements of General State Attorney Office of State Treasury, as well as functioning in the Second Republic of Poland General State Attorney Office of the Republic of Poland, General State Attorney Office of Polish Kingdom, Galician Treasury State Attorney Office, and the achievements of other European countries where there are specialized bodies of state lawyers’.

⁵³ A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu ...*, pp. 47 – 48.

litigation' for a general term 'representation', including actions in all proceedings which refer to the competences of SAO RP. *De lege lata* this representation includes actions in civil, penal and administrative proceedings, before courts, tribunals and other adjudicating bodies in international relations, in proceedings before Constitutional Tribunal⁵⁴.

Representation performed by State Attorney Office has obligatory or not obligatory character⁵⁵. Within obligatory representation we distinguish: representation fully obligatory (exclusive), i.e. representation of State Treasury before Supreme Court and representation of State Treasury before arbitration courts (on the territory of RP, abroad or if it is not indicated) regardless of the amount in dispute and representation limited because of the subject or entity, including representation of State Treasury before courts of general jurisdiction, representation of legal entities before courts of general jurisdiction, Supreme Court and arbitration courts⁵⁶.

In case of exclusive representation of State Treasury before Supreme Court there may be two groups of situations – depending on whether State Attorney Office continues the representation performed before courts of general jurisdiction, or if the representation of SAO RP begins in the proceedings before Supreme Court when State Attorney Office joins pending proceedings in place of an entity which has represented State Treasury so far (participation of SAO RP was not obligatory at previous stages of the proceedings or it did not assume representation on the ground of statutory authorization)⁵⁷.

However, representation of State Treasury before courts of general jurisdiction is obligatory in cases for the revocation of an arbitration award, for the recognition or the declaration of the enforceability of the arbitration award or the settlement concluded before it.

Within the other type of obligatory representation, that is limited because of subject or entity, the representation does not include cases considered in first instance before lower district courts (cases for reconciliation of the contents of the land and mortgage register with the actual legal status, for declaration of acquisitive prescription, and the value of the subject matter exceeds the amount of 1 000 000 PLN).

⁵⁴ Reasons to government draft act on General State Attorney Office of the Republic of Poland, printing, No. 1055, p. 5.

⁵⁵ More about it – cf. M. Dziurda, *Pojęcie i rodzaje zastępstwa w ustawie o Prokuraturii Generalnej Rzeczypospolitej Polskiej* [in:] *Prawo i Państwo. Księga jubileuszowa 200-lecia Prokuraturii Generalnej Rzeczypospolitej polskiej*, ed. L. Bosek, Warszawa 2017, pp. 645–701.

⁵⁶ Also cf. A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu ...*, p. 49.

⁵⁷ Cf. M. Dziurda, *Zastępstwo Skarbu Państwa przez Prokuraturę Generalną Rzeczypospolitej Polskiej w postępowaniu cywilnym*, 'Polski Proces Cywilny' 2017, No. 3, pp. 360.

Another limitation of obligatory representation refers to representation of legal entities. There are limitations as to the entities⁵⁸ and they include representation before Supreme Court, representation of State Treasury, of state organizational without legal personality entities or of government administration bodies before administrative courts; of the Republic of Poland before courts, tribunals and other adjudicating bodies in international relations, of legal entities before courts of general jurisdiction and Supreme Court in cases mentioned in the Act (art. 12 par. 6–7 of the Act on SAO RP).

The second function of SAO RP, next to representation, is issuing opinions and providing advice⁵⁹.

Opinion – making competences of SAO RP as to legal actions performed by entities representing State Treasury have also significantly been strengthened. In terms of the quality of the protection of state property it deserves approval to issue opinions as to legal actions obligatorily (e.g. as to tenders for road infrastructure, for IT service) with the value above 100.000.000 PLN, as well as to legal advice agreements in which the amount of remuneration for the services rendered exceeds 500.000 PLN on an annual basis, and even – legal advice agreements in which the maximum amount of remuneration has not been determined. Legal opinions do not have, as a matter of fact, binding power because, what matters here, is not the expression of consent for concluding the contract but, undoubtedly, in such an opinion, SAO RP may draw attention to some threats (risks) connected with the drafted contract with the aim to avoid litigation in the future⁶⁰.

Manifestation of traditional modernity of the model of SAO RP is the fact of performing the legal representation of state organizational entities and legal entities, as well, but it does not mean full legal service. Representing legal entities with State Treasury share or state legal entities refers only to the most important litigations and requires consent from statutory authorities of those entities.

Representation of legal entities comprises representation of state legal entities different from State Treasury⁶¹, legal entities with State Treasury share⁶²,

⁵⁸ Issued on the ground of art. 12 (3) of the Act on General State Attorney Office of RP.

⁵⁹ A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu ...*, pp. 48–49.

⁶⁰ *Ibid.*, p. 48.

⁶¹ The category ‘state legal entities’ has been defined in a separate legal act, i.e. in the Act dating 16th December 2016 on the principles of state property management (Dz. U. 2016, item 2259), also compare: M. Dziurda, *Zastępstwo osób prawnych przez Prokuraturę Generalną Rzeczypospolitej Polskiej*, ‘Polski Proces Cywilny’ 2017, No. 4, p. 560.

⁶² Cf. A. Adamus, *Spółka z udziałem państwowym a przepisy o zarządzaniu mieniem państwowym*, ‘Monitor Prawniczy’ 2017, No. 8; A. Szumański, *Nowe regulacje prawne spółek z udziałem Skarbu Państwa z uwzględnieniem zmian w kodeksie spółek handlowych obowiązujących od 1.01.2017r.*, ‘Przegląd Prawa Handlowego’ 2017, No. 3.

legal entities with state legal entities share, as well as legal entities with State Treasury share and other state legal entities⁶³.

The aforementioned entities, defined by the legislator as ‘entities being represented’, have been indicated in an adequate regulation of the Prime Minister⁶⁴. It should be stressed that enumeration of entities being represented in a special catalogue aims to guarantee the protection of rights and interests of the entities being represented, of the principles of competition law, of respecting the rights of minority shareholders, including the subject of their activity, and, in particular, the importance of business activities for the interests of the state. There appears a tendency to point out the entities being represented the widest possible way, which shall guarantee the widest possible protection of state property, including – that belonging to state legal entities different from State Treasury.

Representation of legal entities also has obligatory or not obligatory character. Obligatory representation, performed *ex lege* in specific categories of cases, includes: firstly, proceedings before courts of general jurisdiction in cases considered in first instance by higher district court in cases in which the amount in dispute exceeds 5.000.000 PLN (and as a consequence also before Supreme Court – Art. 12 (9)), and secondly, representation before arbitration courts in cases in which the amount in dispute exceeds 5.000.000 PLN. That representation with reference to state legal entities is obligatory, but in case of legal entities with State Treasury share is performed with their consent, which has a general character.

Not obligatory representation varies depending on the entities to which it refers. Firstly, in case of legal entities nominally mentioned in the regulation of the Prime Minister State Attorney Office may assume representation of such an entity in any civil case (in which representation is not obligatory) at its request. Secondly, State Attorney Office may perform representation of legal entities (state legal entities, legal entities with State Treasury share or other state legal entities not mentioned in the regulation of Prime Minister) on the command of Prime Minister if it is needed for the protection of important rights and interests at matters concerning state property regardless of the amount in dispute, but with the consent of the legal entity. It must be stressed that assuming representation of the entity being represented may follow at any stage of the proceedings (also before its initiation)⁶⁵.

⁶³ See: A. Bierć, J. Mucha-Kujawa, *Teoretyczno-prawne poszukiwania...*, pp. 88; J. Bodio, W. Graliński, *Ewolucja zakresu kompetencji Prokuratorii Generalnej Rzeczypospolitej Polskiej*, ‘Rejent’ 2018, No. 2, p. 28.

⁶⁴ Regulation of the Prime Minister dating 11th May 2017, item 938 with amendments.

⁶⁵ Cf. M. Dziurda, *Konstrukcja i zasady zastępstwa osób prawnych przez Prokuratorię Generalną Rzeczypospolitej Polskiej*, ‘Przełęcz Sądowy’ 2017, No. 10.

Moreover, SAO RP has the possibility to join any case which concerns state property, also led by companies with the State Treasury share. It may also refer some cases to state organizational entities at their request or *ex officio*. It is about cases called 'trivial' which do not pose a threat to state property or provoke difference of opinions in jurisprudence⁶⁶.

General SAO RP has been equipped with wide competences as to representation for the purpose of litigation which do not limit to civil cases but it also comprises administrative cases, and even penal, but in penal proceedings SAO RP may assume representation only at the reasoned request of an entity representing State Treasury.

Except for extended representation of the Republic of Poland before courts, tribunals and other international bodies, if the protection of important rights or interests of RP requires it, State Attorney Office has also in their competences: a) representation of government administration bodies (before courts of general jurisdiction and Supreme Court); b) representation of State Treasury, of state organizational entities without legal personality or of government administration bodies (in proceedings before administrative courts), c) representation of legal entities (before courts of general jurisdiction, arbitration courts and before Supreme Court), d) presentation of important views for the cases in litigation (to courts of general jurisdiction, administrative courts, Supreme Court, Constitutional Tribunal).

The premise justifying the assumption of representation of government administration bodies before courts of general jurisdiction and Supreme Court shall be the protection of important rights or interests of RP, that is public interest, which is realized by some bodies of government administration, equipped with specific judicial capacity. They are regulatory bodies (e.g. the President of Competition and Consumer Protection Office, The Energy Regulatory Office, the President of Social Security Office, tax authorities). The Assumption of representation may take place at any stage of the proceedings, including before Supreme Court.

In the proceedings before administrative courts, however, SAO RP may assume representation at a reasoned request of a government administration body, state organizational entity without legal personality or an entity representing State Treasury as long as it finds the basis in judicial capacity of those entities. SAO RP, however, may not assume representation if there is a conflict of interests between those entities (e.g. if the participant in the administrative proceedings is a government administration body and at the same time State Treasury or state organizational entity without legal personality).

⁶⁶ A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu ...*, pp. 48–49.

The President of SAO RP took over some part of competences previously performed by the minister of State Treasury in the scope of supervision over State Treasury property and received new tasks in the organizational and litigation (proceedings) area. Here belongs: a) settlement of disputes at matters concerning rights and interests of State Treasury between state organizational entities without legal personality; b) settlement of competence disputes in the scope of representation in court of State Treasury; c) organization of Arbitration Court with State Attorney Office and providing there services by the Office of State Attorney.

New organizational and litigious (proceedings) tasks of the President of SAO RP are the answer to some problems appearing in this matter in practice. Authorization of the President of SAO RP to settle disputes at matters concerning the rights and interests of State Treasury – within the entities representing State Treasury – shall be an instrument *ultima ratio* because settlement of those disputes may not happen in court because of lack of judicial capacity of those entities. Authorization of the President of SAO to settle competence disputes in the scope of representation in court is intended to eliminate procedural complications which appear within so called negative competence disputes if the bodies of state organizational entities question their competences in terms of representation in court of State Treasury⁶⁷.

What deserves approval and is an expression of modern attitude to settle disputes is establishment of permanent Arbitration Court with SAO, which is competent to settle disputes between different from State Treasury state legal entities, legal entities with State Treasury share or state legal entities. The above-mentioned Arbitration Court may, similarly to other arbitration courts, conduct mediation.

Bearing in mind the changes that have been introduced, which aim, in particular, to extend the tasks and competences of State Attorney Office, the question remains open as to the evaluation of the effectiveness of the construct of State Attorney Office as a ‘highly specialized institutional representative (...) of rights and interest of the Republic of Poland’⁶⁸. Functioning of State Attorney Office will show whether constructed in a centralized way model of state representation in trading as a ‘model of traditional modernity’ will ensure effective representation and protection of state property.

⁶⁷ M. Dziurda, *Reprezentacja Skarbu Państwa w procesie cywilnym*, Kraków 2005, pp. 245; G. Bieniek, H. Pietrzkowski, *Reprezentacja Skarbu Państwa i jednostek samorządu terytorialnego*, Warszawa 2006, p. 136; M. Jaślikowski, *Wniosek sądu o wskazanie organu właściwego do podejmowania czynności procesowych za Skarb Państwa*, ‘Iustitia’ 2017, No. 3; A. Bierć, J. Mucha-Kujawa, *W kierunku tradycyjnego modelu Prokuraturii Generalnej RP...*, pp. 47–50.

⁶⁸ Reasons to the draft act on State Attorney Office of the Republic of Poland dating 22nd November 2016, printing No. 1055, p. 1.

Bibliography

- Adamus A., *Spółka z udziałem państwowym a przepisy o zarządzaniu mieniem państwowym*, 'Monitor Prawniczy' 2017, No. 8.
- Bajor-Stachańczyk M., Lipski J., Krawczyk P., *O Prokuraturii Generalnej w Polsce – historia i teraźniejszość*, 'Biuro Studiów i Ekspertyz' 2003, No. 984.
- Bieniek G., Pietrkowski H., *Reprezentacja Skarbu Państwa i jednostek samorządu terytorialnego*, Warszawa 2006.
- Bierć A., Mucha-Kujawa J., *Teoretyczno-prawne poszukiwania sposobu 'oznaczenia' państwa w obrocie prywatno-prawnym*, 'Studia Prawnicze' 2016, No. 2.
- Bierć A., Mucha-Kujawa J., *W kierunku tradycyjnego modelu Prokuraturii Generalnej RP jako instytucjonalnego zastępcy prawnego (procesowego) państwa (Skarbu Państwa) w obrocie prywatno-prawnym*, 'Studia Prawnicze' 2017, No. 1.
- Bodio J., Graliński W., *Ewolucja zakresu kompetencji Prokuraturii Generalnej Rzeczypospolitej Polskiej*, 'Rejent' 2018, No. 2.
- Bukowiecki S., *Prokuratoria Generalna Rzeczypospolitej polskiej*, 'Gazeta Administracji i Policji Państwowej' 1924, No. 38.
- Całus A., *Problematyka prawna Skarbu Państwa*, 'Biuletyn Rady Legislacyjnej' 1995, No. 6.
- Cybichowski Z., *Encyklopedia podręczna prawa publicznego (konstytucyjnego, administracyjnego i międzynarodowego)*, vol. II, Warszawa [no release year].
- Dziurda M., *Konstrukcja i zasady zastępstwa osób prawnych przez Prokuratorię Generalną Rzeczypospolitej Polskiej*, 'Przegląd Sądowy' 2017, No. 10.
- Dziurda M., *Prokuratoria Generalna i jej kompetencje*, in: *Sine Ira et Studio. Księga jubileuszowa dedykowana Sędziemu Jackowi Gudowskiemu*, eds. T. Ereciński, P. Grzegorzczak, K. Weitz, Warszawa 2016.
- Dziurda M., *Reprezentacja Skarbu Państwa w procesie cywilnym*, Kraków 2005.
- Dziurda M., *Zastępstwo osób prawnych przez Prokuratorię Generalną Rzeczypospolitej Polskiej*, 'Polski Proces Cywilny' 2017, No. 4.
- Dziurda M., *Zastępstwo Skarbu Państwa przez Prokuratorię Generalną Rzeczypospolitej Polskiej w postępowaniu cywilnym*, 'Polski Proces Cywilny' 2017, No. 3.
- Dziurda M., *Pojęcie i rodzaje zastępstwa w ustawie o Prokuraturii Generalnej Rzeczypospolitej Polskiej*, [in:] *Prawo i Państwo. Księga jubileuszowa 200-lecia Prokuraturii Generalnej Rzeczypospolitej polskiej*, ed. L. Bosek, Warszawa 2017.
- Ehrlich S., *Rola Prokuraturii Generalnej w aparacie państwowym*, 'Biuletyn Urzędnicy' 1938, No. 5–6.
- Encyklopedia prawa obowiązującego w Polsce*, part I, No. II, *Ustrój władz administracyjnych państwowych i samorządowych*, ed. Fiszer, Majewski, Poznań 1925.
- Frąckowiak J., *O projekcie ustawy o Prokuraturii Generalnej Skarbu Państwa (projekt w wersji z dnia 17 sierpnia 2004r.)*, 'Przegląd Legislacyjny' 2004, No. 5 (45).

- System Prawa Prywatnego, Prawo cywilne – część ogólna*, vol. I, ed. M. Safjan, Warszawa 2007.
- Gajl N., *Skarb Państwa*, Warszawa 1996.
- Gołąb S., *Organizacja sądów powszechnych*, Kraków 1938.
- Górnisiewicz L., *Prokuratoria Generalna Rzeczypospolitej Polskiej*, 'Śląsko-Dąbrowski Przegląd Administracyjny' 1946, No. 11–12.
- Gruszecki T., *Chodzi o funkcje czy o symbol? Nieporozumienia wokół Prokuraturii Generalnej*, 'Rzeczpospolita' 1998, No. 119 (22.05.1998).
- Jacyszyn J., *Wokół instytucji Skarbu Państwa*, 'Rejent' 1992, No. 10.
- Jaślikowski M., *Wniosek sądu o wskazanie organu właściwego do podejmowania czynności procesowych za Skarb Państwa*, 'Iustitia' 2017, No. 3.
- Karczmarek A., *O władczych uprawnieniach Skarbu Państwa*, 'Radca Prawny. Zeszyty Naukowe' 2015, No. 1 (2).
- Kosikowski C., *Polskie publiczne prawo gospodarcze*, Warszawa 1998.
- Kosikowski C., *Pozycja prawna Ministra Skarbu w Polsce międzywojennej*, 'Finanse' 1973, No. 8.
- Laband P., *Das Staatsrecht des Deutschen Reiches*, Bd. 4, 4. neubearbeitete Auflage, Tübingen-Leipzig 1901.
- Encyklopedia powszechna dla wszystkich*, ed. S. Lam, Warszawa [no release year].
- Litauer J.J., *Prokuratoria Generalna Rzeczypospolitej Polskiej*, 'Gazeta Sądowa Warszawska' 1920, No. 4.
- Mallmann W., *Leitsätze des Berichterstatters über: Schranken nichthoheitlicher Verwaltung* [in:] *Verträge zwischen Gliedstaaten im Bundesstaat. Schranken nichthoheitlicher Verwaltung Aussprache zu den Berichten in den Verhandlungen der Tagung der deutschen Staatsrechtslehrer zu Köln vom 12. bis 15. Oktober 1960*, eds. H. Schneider, W. Schaumann, W. Mallmann, K. Zeidler, Berlin 1961.
- Markowski B., *Administracja skarbowa w Polsce*, Warszawa 1931.
- Mastalski R., *Opinia o projekcie ustawy o Prokuraturii Generalnej Rzeczypospolitej Polskiej (projekt w wersji z maja 1998r.)*, 'Przegląd Legislacyjny' 1998, No. 1–2.
- Mucha-Kujawa J., *Ewolucja regulacji prawnej Prokuraturii Generalnej w Polsce na tle rozwiązań austriackich*, 'Studia Prawnicze' 2012, No. 4.
- Mucha-Kujawa J., *Teoretycznoprawne aspekty przedstawicielstwa organizacyjnego jako pragmatycznego sposobu reprezentacji osoby prawnej*, 'Studia Prawnicze' 2017, No. 3.
- Pietrzkowski H., *Czynności procesowe zawodowego pełnomocnika w sprawach cywilnych*, Warszawa 2010.
- Płaza S., *Historia prawa w Polsce na tle prawnoporównawczym. Okres międzywojenny*, part. 3, Kraków 2001.
- Prokuratoria Generalna SP ma bronić i przewidywać. Wywiad z prof. L. Boskiem, Prezesem Prokuraturii Generalnej RP*, 'Rzeczpospolita' 2.01.2017, <http://www.rp.pl/Prawnicy/301029972-Prokuratoria-Generalna-SP-ma-bronic-i-przewidywac.html/#ap-5>

- Prokuratoria Generalna, 200 lat tradycji ochrony dobra publicznego*, ed. L. Bosek, Warszawa 2016.
- Przychodzki M., Tupin R., *Wprowadzenie* [in:] *Komentarz do ustawy o Prokuraturii Generalnej Skarbu Państwa*, ed. M. Dziurda, Warszawa 2006.
- Radwański Z., *Prawo cywilne – część ogólna*, 9. edition, Warszawa 2007.
- Sobkowski J., *Podmioty gospodarki uspołecznionej jako strona procesu cywilnego*, Poznań 1960.
- Szajkowski A., *Opinia o projekcie ustawy datng 12th March 1999 o Prokuraturii Generalnej Rzeczypospolitej Polskiej*, 'Przegląd Legislacyjny' 1999, No. 2.
- Szumański A., *Nowe regulacje prawne spółek z udziałem Skarbu Państwa z uwzględnieniem zmian w kodeksie spółek handlowych obowiązujących od 1.01.2017r.*, 'Przegląd Prawa Handlowego' 2017, No. 3.
- Szydło W., *Przedstawicielstwo ustawowe jako forma reprezentacji*, 'Studia Prawnicze' 2008, No. 2
- Tupin R., *Skarb Państwa w okresie reform i przemian własnościowych*, 'Przegląd Ustawodawstwa Gospodarczego' 1996, No. 4.
- Tupin R.A., *Geneza reaktywowania Prokuraturii Generalnej w III Rzeczypospolitej* [in:] *Prawo i Państwo. Księga jubileuszowa 200-lecia Prokuraturii Generalnej Rzeczypospolitej polskiej*, ed. L. Bosek, Warszawa 2017.
- Wengerek E., *Obsługa prawna organów państwowych oraz jednostek gospodarki uspołecznionej*, Poznań 1967.
- Wierzbicki J., *Problematyka zastępstwa procesowego Skarbu Państwa. Projekt ustawy o Prokuraturii Generalnej*, 'Przegląd Ustawodawstwa Gospodarczego' 1998, No. 11.
- Windakiewicz J., *Zadania Prokuratury Generalnej i jej stanowisko w procesie cywilnym*, 'Głos Adwokatów' 1926, No. 4.
- Zielona Księga. Optymalna wizja Kodeksu cywilnego w Rzeczypospolitej Polskiej*, red. Z. Radwański, Warszawa 2006.

SUMMARY

The considerations carried out here above seem to confirm that State Attorney Office of the Republic of Poland is an institutional legal representative of the state (*fiscus*) in property cases of national and international character.

In the new organizational and legal shape SAO RP connects to traditional model of that institution, functioning before in Polish legal system. The legislator extended the competences of contemporary State Attorney Office of the Republic of Poland in a far-reaching way in relation to previous situation, constructing State Attorney Office as the main (central) legal advisor and representative for the purpose of litigation in the sphere of mainly property rights of the state in national and international cases with the limited possibility to reach for legal advice from private law firms, or appointing 'external representatives'.

In the new institutional and legal shape SAO RP shall protect, in a 'safe and effective' way, the rights and interests of the Republic of Poland, including of State Treasury and state property not belonging to State Treasury, and its competences divide into obligatory and not obligatory ones.

Keywords

State Attorney Office of the Republic of Poland, State Treasury, *fiscus*, protection of state property, representation, legal representation, right of representation