

BRONISŁAW SITEK\*

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# Legal representation of the State Treasury. Legal and comparative study

## 1. Introduction

The issues related to the organization and execution of legal representation of the state treasury can be considered not only from the point of view of substantive or procedural law but also from the point of view of systemic solutions. The subject of this study is an analysis of existing system solutions with regard to the legal protection of the rights and interests of the state treasury on the example of Poland, Italy, Switzerland and Austria. In addition, the work will refer to the solution used in ancient Rome, which is not only an essential element of the European legal culture, but is also a model for contemporary systemic solutions, including in relation to the studied subject.

As a research hypothesis can be assumed the fact that the implementation of the new system solution in Poland in 2016, consisting of the blanking of the General Counsel to the Republic to the State Treasury existing since 2006, and the appointment of the General Counsel to the Republic of Poland in its place is undoubtedly a rather original solution, especially we talk about very wide competencies of this office. The aim of this paper is an attempt to evaluate this solution in comparison to other historical and current solutions.

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\* BRONISŁAW SITEK, PROF. DR HAB., roman law, comparative law, Faculty of Law, SWPS – University of Social Science and Humanities in Warsaw, e-mail: bronislaw.sitek@gmail.com

## 2. The models of the systematic legal protection of the rights and interests of the state treasury

In Europe, you can find different models of systemic nature. You can distinguish highly centralized models such as currently in Poland. They are characterized by the fact that there is one office dealing with the legal protection of the rights and interests of the treasury without the branch offices. In addition to this, there is a wide range of competencies. Also, there are moderately centralized models such as in Austria (*Finanzprokuratur*), where there is one central office with the possibility, however, to create branch offices or departments. On the other hand, a model of far-reaching decentralization can be found in Italy, where, apart from the central office located in Rome (*Advocato dello Stato*), there are branch departments in the provincial courts. Finally, there is a system of completely decentralized legal protection of the rights and interests of the state, such as in Switzerland, where each public administration body carries out legal services on its own. These offices also perform the state legal representation in the common courts or arbitration courts.

## 3. The system of the protection of the rights and interest of state in ancient Rome

Despite the changes in the political system during the fourteen centuries of existence, the Roman Empire was the most continuously existing state structure in the history of mankind. The most reminiscent aftermath of those days is the law, mainly collected in the *Corpus Iuris Civilis*, which together with canon law are an essential element of modern European legal culture<sup>1</sup>. This claim relates in principle to the private law, in particular to the contract law and the property law, less to the family and inheritance law<sup>2</sup>. The elements of Roman law can also

<sup>1</sup> See: A. Dębiński, *Kościół a prawo rzymskie*, Lublin 2007, p. 17 and next; J. Misztal-Konecka, *Zakaz wyrokowania ponad żądane strony* ('*ne eat iudex ultra petita partium*') – rzymskie tradycje i współczesne regulacje polskiego procesowego prawa cywilnego, *Zeszyty Prawnicze* 12.4 (2912), s. 41-56. It should also be added that Roman law has influenced Scottish law, South African law, the law of Zimbabwe or Sri Lanka. It is quite widely used in the Republic of San Marino. More about the contemporary application of Roman law in Europe see: T. Giaro: P.G. Montaneri, T. Giaro, A. Somma (red.). *Le radici comuni del diritto europeo. Un cambiamento di prospettiva*, Roma 2005, p. 91 and next.

<sup>2</sup> More about the elements of Roman Law in contemporary law provisions see: W. Wołodkiewicz, *Europa i prawo rzymskie. Szkice z historii europejskiej kultury prawnej*, Warszawa 2009, p. 502 and next. See also numerous references in textbook of W. Dajczak, T. Giaro, F. Longchamps de Berie, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa 2014.

be found in widely understood public law. Some elements of Roman solutions can be found in the electoral law<sup>3</sup>, in the way of building the city system (the local government/municipal law)<sup>4</sup> or in the law of public procurement<sup>5</sup>.

The Roman law does not produce any uniform concept of interest or rights of the Roman state. The pragmatic attitude of the Romans led them to solve problems as easily as possible. The authorities of the state, in the period of the republic or of the Principate and later in the Dominate, were most often themselves protecting their interests or rights. The clerical power, including the lawyers, employed by the office were used for these reasons. M. Kaser believes that about the protection of the interests of the state can be said only from the Principate. Earlier, *magistratus* had conducted the legal acts using the power of their *imperium*<sup>6</sup>. From this point of view, it is possible to talk about the system of complete dissemination of the way of protecting the right of state interests in ancient Rome.

The specific need to protect the interests of the state in the area of the protection of the revenue due to *bona caduca*, *bona vacantia* and *damnatio* (the domination legatus for the public treasury) has created, during the reign of the emperor Hadrian, the office of *advocatus fisci*<sup>7</sup>. This fact is known from today's preserved passage written by Elio Sparziano.

Spart. (Script. Hist. Aug.) Hadr. 20,6: Fisci advocatum primus instituit.

This report is also confirmed by inscriptions dating back to the time of Hadrian or the later emperor Antony Pius<sup>8</sup>. The importance of *advocatus fisci* for the protection of the interests of the public treasury is evidenced by the number of preserved regulations contained in the Digests, especially in Book 49 titled *De iure fisci*, and in the Theodosian Code (C.Th. 10.15 – *De advocatis fisci*) and in the Justinian Code (Cf. C. 2,8 – *De advocatus fisci*).

<sup>3</sup> See: J. Szczerbowski: A. Jurewicz and others, *Rzymskie prawo publiczne. Wybrane zagadnienia*, Olsztyn 2011, p. 143 and next. The elements of election Roman law in the American law see: A. Somma: P.G. Montaneri, T. Giaro, A. Somma (red.). *Le radici comuni del diritto europeo. Un cambiamento di prospettiva*, Roma 2005, p. 218 and next.

<sup>4</sup> See: B. Sitek: A. Jurewicz and others, *Rzymskie prawo publiczne. Wybrane zagadnienia*, Olsztyn 2011, p. 255 and next.

<sup>5</sup> See: A. Trisciuglio, *Sarta tecta, ultrotributa. Opus publicum faciendum locare. Sugli appalti relativi alle opere pubbliche nell'eta' repubblicana e Augustea*, Napoli 1998, p. 33 and next.

<sup>6</sup> See: M. Kaser, *Römisches Privatrecht*, München 1983, p. 86 and next.

<sup>7</sup> About the creation of the office of *advocatus fisci* in ancient Rome it was written by numerous Romanists and historians. See among others: A. Agudo Ruiz, *El advocatus fisci en Derecho romano*, Madrid 2006, p. 37 and next.; P. Lambrini, *In tema di „advocatus fisci” nell'ordinamento Romano*, in SDHI 59(1993), pp. 325-336.

<sup>8</sup> ILS 1451.

*Advocatus fisci* was not an office in the modern sense of the word. Rather, it should be assumed that it was an official, whose duties included legal protection of the rights and interests of the tax authorities. Therefore, from that time on, this official was also established at office of the prefect of the Province.

C. Th. 10.15.4. (Imp. Valentinianus et Valens AA. Ruffinum p.p.) Vicarios praefecturae ordinariosque rectores praecelsa sinceritas tua istius sanctionis auctoritate commoneat, ut privatae rei nostrae, quotienscumque aliquas vel denuntiaverit vel exceperit actiones, idoneos tribuant advocatos. Dat. XIII kal. iun. Remis Lupicino et Iovino cons. (367 mai. 19).

According to the text of the above-mentioned constitution, *advocatus fisci* was a part of the advisory council of the prefect of the province. His task was to undertake mainly procedural activities in the field of legal protection. He made his allegation when a statement was made that the public treasury was exposed to a loss or if a complaint was filed against the public treasury.

#### 4. The system of the protection of the rights and interest of state in Austria

The Austrian Office of the Counsel of State Treasury is a fairly old institution and dates back to the Hohenstaufen dynasty, which ruled in Germany between 1079 and 1254. Since 1194, the dynasty also took over south of Italy, including Sicily. During this period, there was a fiscal office (*Fiskalamt*), which included the legal protection of the rights and interests of the emperor and the state. In 1225, the emperor Frederick II (1220-1250) established the office of procuratores *fisci vel curiae* in Sicily, modeled on the Roman institution *advocatus fisci*.

In the thirteenth and fourteenth centuries, there was a process of gradual separation of ruler's private property from state property. This process was caused by the frequent changes of the pre-eminent dynasty and due to the growing Turkish threat in Europe. The rulers entrusted the landlords (*der Landeshauptmann*) with certain parts of the territory of duchies or kingdoms, granting them the right to execute the judiciary (*der Landrichter*) or to keep the register of real estate (*der Landschreiber*)<sup>9</sup>.

The turning point was the establishment of office of *Kammerprokurator* in 1539. The task of this office was to represent the rights and interests of the emperor, princes and their officials. An unfavourable verdict against the emperor

<sup>9</sup> See: W. Peschorn, *Die Geschichte der Finanzprokurator*, p. 2. [https://finanzprokurator.bmf.gv.at/historisches/Die\\_Geschichte\\_der\\_Finanzprokurator.pdf?5b2e29](https://finanzprokurator.bmf.gv.at/historisches/Die_Geschichte_der_Finanzprokurator.pdf?5b2e29) [access: 21.05.2017].

could not be announced earlier than *Kammerprokurator* did not agree to it. Existing offices of the protection of the rights and interests of state (*Fiskalamt*) were subordinated to the regional courts of states. In the sixteenth century, the seat of the *Fiskalamt* was Vienna, as well as Bratislava, Innsbruck and Prague, so the office was moderately decentralized.

In 1851, a new office of the *Finanzprokurator* – the Financial Prosecutor, was established. However, it more appropriate translation of the name of this office is General Counsel to the State Treasury. The Prosecutor had numerous branch offices, between others, since 1784 in Lviv and Cracow<sup>10</sup>.

Currently in Austria, there is a legal system for the protection of the rights and interests of the Treasury which is called *Finanzprokurator*. The legal base for functioning of this office is the Act of 8<sup>th</sup> August 2008 on the General Counsel Office (*Finanzprokuratorgesetz*)<sup>11</sup>. This act entered into force on 1<sup>st</sup> January 2009. In addition, many other legal regulations have been mentioned in this act, which contain regulations about the organization or the tasks of the General Counsel Office<sup>12</sup>. *Finanzprokurator* is not a constitutional organ.

The General Counsel Office is the statutory representative of the State and not only the legal representation of the state in the lawsuits. Such a position stems from the § 1 of the Act of 2008 on the General Counsel Office, according to which the task of this body is not only the legal representation of the State during the trial in the national courts, but also the legal representation in front of the international courts, the representation of the Council of Ministers in the Constitutional Tribunal, issuing the legal opinions, giving the opinions about legal provisions concerning the interests of the state, as well as giving the opinions on the content of legal acts concluded by the state organs<sup>13</sup>.

The General Counsel Office is a federal government body operating within the structure of the Ministry of Finance. According to the § 17 (3) of the Act on the General Counsel Office, the Minister of Finance supervises the General Counsel Office in the area of financial discipline and disciplinary liability of employees. However, the Minister of Finance cannot interfere with matters connected with the legal representation of the Counsel in the process of legal proceedings or legal consulting<sup>14</sup>.

<sup>10</sup> See: K. Buczyński, P. Sosnowski, *Prokuratoria Generalna. 200 lat tradycji ochrony dobra publicznego*, Warszawa 2016, p. 14 and next. M. Tkaczuk, *Prokuratoria Generalna Rzeczypospolitej Polskiej*, vol. I, Uniwersytet Szczeciński, Szczecin 2003, pp. 19-20. unpublished PhD thesis.

<sup>11</sup> BGBl 2008 No. 110.

<sup>12</sup> See: B. Sitek, *Austriacka Prokuratoria Skarbu (Finanzprokurator) part I: Historia i struktura Urzędu*, *Roczniki Nauk Prawnych* 26(2016) no 2, pp. 177-190

<sup>13</sup> *Ibidem*.

<sup>14</sup> *Ibidem*.

## 5. The system of the protection of the rights and interest of state in Switzerland

Switzerland is a federal state. This country remains a model of the organization of state structures implementing the principles of democracy. There are two dates important for the existence of this state. The first is 1291, when they established the perpetual relationship based on the Act called the Federal Charter concluded between rural communes of Uri, Schyz and Unterwalden. Over time, other states have joined the union. The formation of modern Swiss borders ended in 1515 after the Swiss defeat in the Battle of Marignano against French and the Venetian Republic forces. An important stage in the formation of the Swiss federation and the socio-political system was the choice of neutrality, which was proclaimed by the Swiss government in 1813. With the constitution of 1848, the union of states was transformed into a federal state with the seat in Bern<sup>15</sup>.

Switzerland is an example of a state that does not have a centralized centre for the legal protection of treasury's rights and interests. Hence, in Switzerland, there is no single centralized Federal body responsible for protecting the rights and interests of the state treasury. This is the effect of the extensive powers of the cantons and municipalities. The role of the Federation is largely limited to the "coordination" of state action. Hence, the legal representation in litigations or legal issues involving the Federation is "coordinated" by the Federal Finance Department (*Eidgenössischen Finanzverwaltung*). In this Department, there is an office focused on legal support (*Rechtsdienst*) which employs only 9 lawyers as advocates. The conduct of individual cases is essentially outsourced to the lawyers working outside of office. All cases against the Swiss state for compensation for damage caused by state officials, based on the article 20, section 2 of VG, are submitted against the Federal Financial Department of Switzerland and this does not depend on the workplace of the official who contributed to the damage.

## 6. The system of the protection of the rights and interest of state in Italy

Another system of legal protection of the rights and interests of the treasury, having its peculiarities, is the system implemented in Italy. Already at the very beginning, it should be noted that the Italian state itself in its present form has existed since 1870, when the final unification of Italy took place. Therefore, the issue of the legal system of protecting the rights and interests of the State Treasury can be considered just from this moment. However, the systems existing

<sup>15</sup> More about the history of Switzerland see: J. Wojtowicz: *Historia Szwajcarii*, Wrocław 1989.

early in different kingdoms and principals located on the Apennine Peninsula cannot be forgotten. In fact, it has already been mentioned when discussing the Austrian system. Many existing systems were then grouped into two sets. The first, called the Tuscan system, was characterized by a strong centralization of legal representation of the material and non-material interests of the state. The second system, called the Neapolitan system, was characterized by the delegation of the legal representation of the State Treasury in the lawsuits to lawyers operating on the free market of legal services (*avvocato del libero*) (*I sistemi preunitari...*)<sup>16</sup>.

At the beginning of statehood of Italy, the Neapolitan model of protecting the interests of the state treasury was adopted. Subsequently, based on this system, the Office of the Treasury Ombudsman (*Avvocatura Erariale*) was created but with the typical competence of the Tuscan model, that is, the acquisition of exclusive competence by the authority for the legal representation of the public administration bodies.

In 1815, based on the Act no 915, the offices focused on financial disputes were established and they were subordinate to the Minister of Finance. It was the responsibility of this body to provide legal advice, to take legal and non-litigative representation on behalf of the fiscal administration<sup>17</sup>.

The final reform of the legal system for the protection of interests and property rights and the non-pecuniary status of the Italian state was carried out in 1933 on the basis of Royal Decree number 1611. The *Avvocatura dello Stato* was established. The name of this office has been preserved until today.

The current office of the State Advocate functions on the basis of three basic legal acts, amended and supplemented several times. The first of these is the previously mentioned Royal Decree No. 1611 (1) of 30<sup>th</sup> October 1933, followed by the royal decree No. 1612 of 1933, and the Act No. 103 of 3<sup>rd</sup> April 1979, which introduced quite significant changes in the decree. In addition, the current system of organization of the Ombudsman office is also based on the decree with the power of Act No. 155 (*decreto legislativo*) of 2<sup>nd</sup> March 1948.

The office of *Avvocatura dello Stato* is not a constitutional body and is subordinate to the minister of justice. The branch offices are located at regional courts. However, it is an autonomous and independent body and it means that it does not depend on the heads of other ministries. The Advocate's primary task is to protect the material immaterial interests of the state and other entities with state property. Furthermore, the General Advocate not only deals with the legal representation of the organs of state administration (*affari contenziosi*),

<sup>16</sup> See: B. Sitek, *Avvocatura dello stato – Rzecznik Generalny ds. ochrony praw i interesów państwa. Bezpieczeństwo ochrony praw i interesów państwa włoskiego*, Journal of Modern Science 4/27/2015, pp. 127-146.

<sup>17</sup> Ibidem.

but also is the body that provides all kinds of legal advice or prepares legal opinions for these bodies (*affari consultativi*).

## 7. The system of the protection of the rights and interest of state in Poland

The system of legal protection of the rights and interests of the state treasury has a rather long history. Already in the Republic of Poland existed the office of the instigator, analogous to the *advocatus fisci* of ancient Rome. This office was established in 1557 under the reign of King Sigismund Augustus. The Instigator was a kind of state prosecutor with extended powers for civil matters related to the protection of the interests of the treasury. In total, there were two instigators, one in the Crown, the other in Lithuania. The scope of the competence of the instigator included the pursuit of criminals for committing a crime of the betrayal or the insult to the royal majesty and thus it was a function similar to that of today's prosecutor. But the instigator also had the power to file complaints against royal dignitaries, treasurers, starosts, tax collectors, *zupniks* (a manager which in the name of the king oversaw the operations of a mining district) and anyone who would harm any public treasure<sup>18</sup>.

The establishment of the General Counsel the Kingdom of Poland in 1816 was an important fact for the development of the modern institution of the General Counsel. The motive for establishing this office was the need to protect the property of the Polish state remaining within the borders of the Kingdom of Poland, established in 1815. Despite numerous adversities<sup>19</sup>, it was found necessary to establish a body that would protect not only the treasury but also public land, income, crown property, government (national) property, education funds, the goods and funds of the clergy, the rural and municipalities properties, the charity gatherings, the hospitals, the corporations and the public institutes<sup>20</sup>. The Counsel office also dealt with issues related to the heirless and vacant inheritances and was responsible for issuing legal opinions, and cooperation with other state agencies<sup>21</sup>. In the system, the General Counsel Office was

<sup>18</sup> B. Sitek, *Historia ochrony prawnych interesów skarbu państwa w Polsce*, Journal of Modern Science 4/23/2014, pp. 231-247.

<sup>19</sup> See: W. Garliński, *Tradycja i postęp w instytucji Prokuraturii Generalnej Rzeczypospolitej Polskiej*, Teka Kom. Praw. – OL PAN.2008, sp. 56.

<sup>20</sup> See: W. Witkowski, C. Kosikowski (ed.), *System prawa finansowego*: vol. 1 – *Teoria i nauka prawa finansowego*, Warszawa 2010, p. 122.

<sup>21</sup> See: M. Wąsowicz, *Prokuratoria Generalna Królestwa Polskiego w latach 1816-1866/1867*, CPH, vol. XXXI, issue 2.1979, pp. 118-120.



located between the administration bodies and the judicial authorities. This office existed until 1915.

In the interwar period of the 20th century, under the decree signed by the Head of State Józef Piłsudski, on 7<sup>th</sup> February 1919, the General Counsel to the Republic of Poland was established. On 31<sup>st</sup> July 1919, the Act was passed concerning the creation of the General Counsel to the Republic of Poland (Journal of Laws No 65/390). Finally, the system and tasks of the General Counsel Office were governed by the Decree of the President of the Republic of Poland of 9<sup>th</sup> December 1924 on the change in the system of the General Counsel to the Republic of Poland (Journal of Laws No 107/967). The scope of the General Counsel to the Republic of Poland consisted of: the general legal representation in matters relating to the property and public rights and interests of States, the legal representation in the common courts, in the courts of public laws, in administrative proceedings, the issuance of legal opinions at the request of state authorities in matters relating to the state's interests and public interests, and the cooperation in the preparation of legal acts concerning the rights and interests of the state. The office of the General Counsel to the Republic of Poland was subordinate to the Minister of the Treasury.

After the Second World War, the General Counsel to the Republic of Poland was finally extinguished in 1951. The protection of state interests was taken over by individual *stationes of fisci* having specialized legal cells. At the beginning of the nineties, many initiatives were launched to restore the General Counsel Office. One of them was a bill drafted by the Social Legislative Council acting at NSZZ Solidarność. However, due to its proposal to take over the control over the disposal of the Treasury property by the General Counsel, the Act was not passed. Another attempt was made in 1998. However, the submitted government project, which was actually adopted by the Sejm and Senate, was vetoed. The adoption of the draft law of 8th July 2005 on the General Counsel to the State Treasury (Journal of Laws of 2005, no. 169, item 1417) was successful. This Act entered into force on 15<sup>th</sup> March, 2006<sup>22</sup>. The General Counsel to the State Treasury was operating until 2016 and was subordinate to the Minister of the State Treasury, analogically as it was in the interwar period of the Republic of Poland. The scope of competence of the General Counsel to the State Treasury was limited to protecting the civil interests of the state (Article 67 of the Civil Law Code), so that office did not deal with criminal or administrative matters in which the State took part. It was therefore a centralized office with the possibility of creating branch departments but those offices have been never created.

With the change of political power in Poland in 2015, the sentiments to the interwar period revived. Consequently, a new Act of 15<sup>th</sup> December 2016

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<sup>22</sup> See: B. Sitek, *Historia ochrony...*, p. 233.

on the General Counsel to the Republic of Poland (Journal of Law 2016, item 2261) was adopted. Substantial changes, beyond the nomenclature, include the change in the systematic position of the General Counsel to the Republic of Poland Office and a significant extension of its powers. According to the article 1 section 4 of the Act of 2016 on the General Counsel to the Republic of Poland, the supervision of the General Counsel is to be performed by the Prime Minister. The new position is also won by the President of the General Counsel to the Republic of Poland, namely based on the article 1, section 2 of the Act of 2016, the President of General Counsel to the Republic of Poland performs tasks specified in separate regulations.

The President of General Counsel to the Republic of Poland can issue administrative decisions from which there is no appeal to another body. Hence, the administrative decisions issued by the President of the General Counsel Office will be governed by the relevant provisions of the Act of 14<sup>th</sup> June 1960 – the Code of Administrative Procedure (Journal of Laws of 2016, item 23, 868, 996 and 1579) on the decisions issued by the Minister. At the same time the President remains the internal organ of the General Counsel Office, including the fact of being the superior of the staff of this institution. Based on the solution dating back to the time before 1939, a new category of employees was introduced – a referendary (the division official), whose duty is to support the General Counsel. The referendary will be able to run, under the direction, a simple case of representation. This solution is criticized in the media, it is pointed to a rather high risk of lowering the quality of legal protection of rights and interests of the State Treasury.

## 8. Conclusions

The analysis of the five selected cases shows that there are far-reaching systemic solutions to the legal protection of the rights and interests of the state treasury. It is difficult to even choose a specific criterion by which systematization can be made. This is a result of historical evolution, different in particular countries.

Undoubtedly, a model institution is *advocatus fisci*, the ancient Rome institution which was an inspiration in the early Middle Ages to create analogous offices to protect the rights and interests of the state. In this way, in most European countries, the offices have been created, the tasks of which are the legal protection of the rights and interests of the state treasury.

In some countries, this is a strongly centralized system, as there is currently in Poland or Austria. The opposite is the Swiss system, almost completely decentralized. In the middle, there are the centralized systems with the numerous branch offices such as in the case of Italy.

The localization of these organs in the structure of the state is also differentiated. In Poland, currently, the General Counsel to the Republic of Poland is directly subordinate to the Prime Minister. More often it is a body located within the structure of the Ministry of Justice (Italy) or the Ministry of Finances (Austria and Switzerland).

Finally, there is a question about the competences. The Polish Office of the General Counsel to the Republic of Poland has the widest competences currently encountered in these types of resolutions. The most appropriate solution seems to be the Swiss solution, where the protection of the interests of the state is solely connected with the budgetary resources, just as it was in ancient Rome.

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## Zastępstwo procesowe Skarbu Państwa. Studium prawno-porównawcze

### Streszczenie

Ustawą z dnia 15 grudnia 2016 o Prokuraturii Generalnej Rzeczypospolitej Polskiej (Dz.U z 2016 poz. 2261) powołano do życia nową instytucję w miejsce dotychczasowej Prokuraturii Generalnej Skarbu Państwa. Tą ustawą poszerzono również w sposób znaczący zakres kompetencji tej nowej instytucji również na sprawy administracyjne i karne, w których występuje interes Skarbu Państwa. Tak szeroka reprezentacja praw i interesów Skarbu Państwa jest dość rzadko spotykanym rozwiązaniem przynajmniej w Europie. Jest to nawiązanie do rozwiązań obowiązujących w okresie II Rzeczypospolitej Polskiej XX wieku. Te zmiany zmuszają do pewnej oceny obecnych rozwiązań związanych z zastępstwem procesowym Skarbu Państwa w odniesieniu do rozwiązań występujących w innych krajach europejskich. Oprócz prawno-porównawczego podejścia do problemu, w pracy znajdzie się również odniesienie do rozwiązań występujących w antycznym Rzymie, gdzie powołano do życia pierwszy tego rodzaju urząd jakim był *advocatus fisci*. Badania prawno-historyczne pozwolą na zdystansowanie się od obecnych rozwiązań. Dzięki temu można będzie wskazać na optymalny model zastępstwa procesowego Skarbu Państwa.

**Słowa kluczowe:** Prokuratoria Generalna, zastępstwo procesowe państwa, prawo rzymskie, *advocatus fisci*, *Avvocato dello Stato* Finanzprokuratur.

## Legal representation of the State Treasury. Legal and comparative study

### Summary:

The Act of 15<sup>th</sup> December 2016 on the General Counsel to the Republic of Poland (Journal of Laws of 2016, item. 2261) has established the new institution in the place of the current General Counsel of the State Treasury. This Act also expanded significantly the scope of competence of this new office also on the administrative and criminal matters, in which there is the interest of the State Treasury. Such a wide legal representation of the rights and interests of the State Treasury is a fairly rare option, at least in Europe. This is a reference to the arrangements being in force during the Second Polish Republic of the twentieth century. These changes are forcing to assess current solutions related to the legal representation of the State Treasury in relation to the solutions found in other European countries. In addition to the legal and comparative approach to the problem, the study will also include a reference to the solutions found in ancient Rome, where the first of this kind office, which was *advocatus fisci*, was established. The legal and historical research will allow to keep the distance to the current solutions. Thanks to this, it will be possible to identify the optimum model of the State Treasury legal representation.

**Keywords:** General Counsel, legal representation of the State Treasury, roman law, *advocatus fisci*, *Avvocato dello Stato*, Finanzprokuratur.