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Civil-Law Protection of Personal Interests of the State Treasury – Selected Issues

Cywilnoprawna ochrona dóbr osobistych Skarbu Państwa – wybrane zagadnienia

ABSTRACT

The scientific and research analysis presented in the study covers an issue from the area of the general part of civil law, concerning personal interests of juridical persons. The discussion will make it possible to determine whether the State Treasury – a special-type juridical person, the substrate of which is the State, therefore a subject of public law – is entitled to specific non-property values. The need to discuss the problem – important from the point of view of legal practice – results from the fact that it has not yet been resolved in any separate study. The article first presents considerations on the essence of personal interests of juridical persons and the legal subjectivity of the State Treasury. It is only against this backdrop that it is possible to give an affirmative answer to the question formulated above. In connection with the recognition that the State Treasury possesses personal interests, the study needs to address several selected issues of a detailed nature. It should be determined whether the protection of personal interests of the State Treasury should concern only the performance of private-law tasks by the State, i.e. within the scope of *dominium*, or this protection covers also activities within the sphere of *imperium*. In addition, it is necessary to decide which personal interests of juridical persons are vested in the State Treasury and what conduct of this entity may put them at risk or infringe them. It seems also necessary to analyse the rules and means of protection of personal interests of the State Treasury, as well as to quote and discuss the provisions contained in the Act on the Institute of National Remembrance concerning the protection of values of public-law nature in the form of the good name of the Polish State and the Polish Nation.

Keywords: personal interests; State Treasury; State; juridical person; non-property values; *stationes fisci*

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INTRODUCTION

The discussion under this study concerns the issue of the existence of personal interests (*dobra osobiste*) of a juridical person of special type – the State Treasury. Their purpose is to provide an answer to the question of whether the State Treasury is entitled to these values, which is important from the point of view of practice, but which has not been resolved to this day. The analysis of the current achievements of the scholarly opinion shows that the authors in most of the studies did not address issues concerning the non-property interests of the State Treasury, focusing primarily on the procedural aspects and the financial sphere of this entity.[1] Therefore, there is a reasonable need to discuss the problem.

The scholarly literature and case law clearly indicate that the personal interests of juridical persons are non-property values owing to which juridical persons can function with full correctness in accordance with the scope of their tasks.[2] Personal interests of juridical persons include: name (business name), reputation (good name), secrecy of correspondence, integrity of premises and the sphere of privacy.[3] The literature stresses that these interests are of a non-property, intangible nature and are closely linked to rightholders who are entitled throughout their period of existence, irrespective of the fulfilment of any additional criteria.[4] The protection of these values has been regulated by the legislature in Article 43 CC,[5] according to which the provisions on the protection of the personal interests of natural persons apply *mutatis mutandis* to juridical persons. Each of the personal interests, vested both in natural and juridical persons, is protected by a separate right of an absolute, non-property, non-negotiable and non-transferable nature – this is due to the approval by most scholars in the field of the so-called pluralistic concept of protection of personal interests.[6]

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[1] See, e.g., A. Doliwa, *Dychotomiczny charakter podmiotowości prawnej państwa (imperium i dominium)*, "Studia Prawnicze" 2003, no. 9, p. 33 ff.; M. Mączyński, *Wybrane zagadnienia ustrojowe Skarbu Państwa*, "Przegląd Sejmowy" 2003, no. 6, p. 19 ff.; A. Całus, *Problematyka prawna Skarbu Państwa*, "Przegląd Legislacyjny" 1995, no. 4, p. 12 ff.; M. Dziurda, *Reprezentacja Skarbu Państwa w procesie cywilnym*, Kraków 2005; N. Gajl, *Skarb Państwa*, Warszawa 1996.

[2] See, e.g., J. Panowicz-Lipska, *Majątkowa ochrona dóbr osobistych*, Warszawa 1975, p. 28; judgment of the Supreme Court of 14 November 1986, II CR 295/86, OSNC 1988, no. 2–3, item 40.

[3] See, e.g., Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2019, p. 198; A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2018, pp. 256–257.

[4] See, e.g., Z. Radwański, A. Olejniczak, *op. cit.*, p. 163.

[5] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2023, item 1610, as amended).

[6] See, e.g., S. Grzybowski, *Ochrona dóbr osobistych według przepisów ogólnych prawa cywilnego*, Warszawa 1957, pp. 17–19; A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 217; A. Szpunar, *Ochrona dóbr osobistych*, Warszawa 1979, p. 115; J. Panowicz-Lipska, *op. cit.*, p. 6; Z. Radwański,

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Despite the specific nature of the legal subjectivity of the State Treasury and doubts that may arise from the grammatical interpretation of Article 34 CC governing the scope of rights and obligations that may be vested in or be imposed on the State Treasury, it seems appropriate to put forward a research hypothesis according to which this entity has personal interests. In order to justify its correctness, consideration should begin with general issues, i.e. determining what the State Treasury is under civil law. Only after an analysis of the essence of this normative structure created by the legislature will it be possible to consider the legal situation of this entity in the field of non-property interests. The mere recognition that the State Treasury possesses personal interests does not, however, determine what catalogue of these values this entity is entitled to and what is the scope of their protection compared to other juridical persons. Due to the specific nature of the legal subjectivity of the State Treasury, it is justified to propose a second research hypothesis, according to which the State Treasury is not entitled to all personal interests usually vested in juridical persons, and that cases in which this entity can effectively pursue their protection are narrower than for other juridical persons. Therefore, it is further necessary to establish the catalogue of personal interests of juridical persons that the State Treasury is entitled to, behaviours that may lead to putting them at risk or their violation, and the principles and means of protecting these values.

The research method used in this study is the dogmatic-legal method. It involves an analysis of the applicable legal provisions and current views presented by scholars in the field and case law. In order to identify the existence of personal interests of the State Treasury, legal provisions containing norms from the scope of substantive civil law are discussed, primarily those contained in Chapter II of the General Part of the Civil Code titled "Juridical Persons". The basic literature collected and used in the study can be divided into two main groups. The first group includes studies on the essence of the civil-law subjectivity of the State Treasury, while the second group includes publications that address the problem of the legal nature of personal interests of juridical persons. Due to the dual nature of the legal subjectivity of the State, the paper also discusses, as a subject of an auxiliary nature, legal regulations in the field of constitutional law, criminal law and administrative law, as well as scholarly findings from these branches of law. To present the practical aspects of the analysed problematic, the study takes into account the views expressed in the jurisprudence of the Polish Constitutional Tribunal, the Supreme Court and common courts.

A. Olejniczak, *op. cit.*, p. 178. See also another opinion, e.g., A. Bierć, *Zarys prawa prywatnego. Część ogólna*, Warszawa 2015, p. 218; J. Kosik, *Zespół praw i jedno prawo podmiotowe jako metody ochrony dóbr osobistych w kodeksie cywilnym*, "Przegląd Prawa i Administracji" 1977, vol. 9, p. 47; B. Gawlik, *Ochrona dóbr osobistych. Sens i nonsens koncepcji tzw. praw podmiotowych osobistych*, "Zeszyty Naukowe UJ. Prace z Prawa Własności Intelektualnej" 1985, no. 41, p. 124.

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RESEARCH AND RESULTS

1. Nature of legal subjectivity of the State Treasury

The State, which is a political organisation of society (embodiment of the national community), is regarded in the European continental legal tradition primarily as a public-law body,[7] pursuing its objectives by means of sovereign instruments governed by public law.[8] However, civil law scholars note that the tasks entrusted to that organisation are so complex that they cannot be fulfilled without the concurrent use by that entity of legal instruments provided for by private law rules.[9] In order to be fully able to carry out its functions, the State must, firstly, have property, i.e., in accordance with Article 44^1 § 1 CC, ownership and other property rights, and, secondly, participate in civil-law relations, that is relationships developed on the principle of equality of parties in which it is not entitled to influence the legal position of other entities in a sovereign manner.[10] In view of the above, a need to empower the State also under private law has emerged.

Polish law has adopted the concept that the State participates in the above-mentioned civil law relations in the form of a peculiar civil-law entity – a juridical person called the State Treasury (Article 33 CC).[11] The peculiarity of this entity

[7] A. Bierć, *op. cit.*, pp. 294–295.

[8] Similarly Z. Radwański, A. Olejniczak, *op. cit.*, p. 200. Examples of the tasks of the State in the sphere of public law are: the collection of taxes by revenue offices, the granting of concessions and licences to carry out business activities, and the issuance of rulings and decisions in individual cases by courts and public administration bodies.

[9] Cf. J. Frąckowiak, [in:] *System Prawa Prywatnego*, vol. 1: *Prawo cywilne – część ogólna*, ed. M. Safjan, Warszawa 2007, p. 1059.

[10] The scholarly opinion lists examples of non-sovereign activities of the State, e.g. employing its own officers, land management, being liable for damage caused by the State's activities, and performing legal transactions involving property owned by the State. See *ibidem*.

[11] See, e.g., resolution of the Supreme Court of 21 September 1993, III CZP 72/93, OSNCP 1994, no. 3, item 49; Z. Radwański, A. Olejniczak, *op. cit.*, p. 200. Pursuant to Article 33 CC, juridical persons under Polish law include the State Treasury and those organisational units on which specific provisions confer legal personality. It is worth noting that the State Treasury is the only juridical person whose legal personality results directly from the provisions of the Civil Code – this legislation does not contain any provisions to give such characteristics to any other entity. The importance of the State Treasury is also evidenced by the inclusion of regulations concerning this entity in the Constitution. Pursuant to Article 218 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended), "the organisation of the State Treasury and the manner of management of the assets of the State Treasury shall be specified by statute". As pointed out by constitutionalists, the above regulation should be read together with the regulation contained in Article 216 (2) of the Polish Constitution, according to which "the acquisition, disposal and encumbrance of property, stocks or shares, issue of securities by the State Treasury, the National Bank of Poland or other State juridical persons shall be done in accordance with principles and by procedures specified by statute", because the interpretation of the above provisions of the Polish Constitution is intended

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results from the fact that its substrate is the State itself (and thus a public-law entity) and not, as in the case of other types of juridical persons, a specific organisational unit.[12] This means that the State and the State Treasury are not two separate and independent legal entities, but constitute the same entity.[13]

The granting of legal subjectivity to the State organisation, which took place on these two indicated normative levels, made it necessary to apply to this entity two different legal regimens, regulating its participation in legal transactions. On the one hand, the relations between the State and the individual, in which it participates as a carrier of authority (the so-called *imperium*), are governed by provisions classified in the public law subsystem, while on the other hand, the relations between the State and the individual, which are characterised by the equality of the parties and in which disputes are to be resolved by an independent court, are governed by private law.[14] This duality is also noticeable at the terminological level. The term "State" is used by the legislature when it equips it with instruments of power,[15] while the term "State Treasury" is used in cases where the rights and obligations of this entity relate to private law relations, covering primarily the property owned by it – this is the so-called sphere of *dominium*.[16]

There are many definitions of the State Treasury formulated in legal scholarly opinion. According to one of them, the State Treasury is a legal entity designed

to lead to granting the State Treasury a legal personality (as in L. Bosek, *Commentary on Article 218*, [in:] *Konstytucja RP*, vol. 2: *Komentarz do art. 87–243*, ed. M. Safjan, Legalis 2016, margin no. 19). However, it seems that the proposals for interpretation assumed above are contrary to the normative method of regulation of juridical persons adopted in Polish civil law. The essence of this concept is that the legal system does not specify the general features that must be met by organisational units in order to be considered juridical persons, but it is the special provisions which clearly indicate by name individual entities or their types which have legal personality (see Z. Radwański, A. Olejniczak, *op. cit.*, pp. 191–192). The provisions of the Polish Constitution, on the other hand, do not directly confer legal personality on the State Treasury – as they do, e.g., in relation to local government entities in Article 165 (1) – but merely list a number of its rights, such as the right to acquire, dispose of and encumber property, stocks or shares (Article 216 (2) of the Polish Constitution). It is only possible to draw a general conclusion from their analysis that the Constitution recognises the fundamental civil-law subjectivity of the State Treasury, and that the details relating to the legal structure of that entity are left to be regulated in legislation of statutory nature.

[12] A. Bierć, *op. cit.*, p. 295; A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 241.

[13] R. Szczepaniak, *Commentary on Article 34*, [in:] *Kodeks cywilny*, vol. 1: *Komentarz do art. 1–352*, ed. M. Gutowski, Legalis 2018, marginal no. 5. According to the author, the source of the construct of the State Treasury is the adoption by the legislature of a legal fiction which gives the impression that there is another separate entity from the State itself – an entity called the State Treasury.

[14] A. Doliwa, *Dychotomiczny charakter…*, p. 37 and the literature referred to therein.

[15] According to the view expressed in the literature on the subject, "there are few institutions, concepts or bodies in Poland whose names – in relation to a specific object – are written capitalised as consistently as the State Treasury" (M. Mączyński, *op. cit.*, p. 19).

[16] For more details, see A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 258.

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for the management of state assets.[17] Civil law literature also states that it is unnecessary to devise scholarly definitions of the State Treasury, as this concept is explained by Article 34 CC.[18] The provision states that "in civil-law relations, the State Treasury shall be the subject of rights and obligations which relate to the State assets which do not belong to other State legal entities". According to another definition, the State Treasury is a special person under civil law, having an equivalent and autonomous position to other natural and juridical persons, which is in fact the State itself acting as owner, debtor and creditor.[19] It should therefore be noted that there is currently no doubt among scholars in the field as to the possibility of the State enjoying property rights.[20] This is due not only to the fact that the State Treasury is granted legal personality but also to the existence of a separate, detailed regulation, i.e. Article 34 CC.

As regards another issue, important from the point of view of the considerations under discussion, i.e. the internal organisational structure of the State, it should be noted that in cases where it performs tasks under civil law, i.e. as the State Treasury, it acts through state organisational units not having separate legal subjectivity, referred to as *stationes fisci*.[21] This is because the State Treasury has

[17] See L. Bosek, *Commentary on Article 218…*, margin no. 19.

[18] See, e.g., S. Dmowski, [in:] *Komentarz do Kodeksu cywilnego. Księga pierwsza. Część ogólna*, eds. S. Dmowski, S. Rudnicki, Warszawa 1998, p. 86, 89; W. Szydło, *Aspekty podmiotowości prawnej Skarbu Państwa*, "Acta Universitatis Wratislaviensis. Prawo" 2008, no. 304, p. 180.

[19] A. Doliwa, *Dychotomiczny charakter…*, p. 45. Cf. M. Dziurda, *op. cit.*, pp. 28–30.

[20] See, e.g., A. Kubiak-Cyrul, *Commentary on Article 34*, [in:] *Kodeks cywilny. Komentarz*, ed. M. Załucki, Legalis 2019, marginal no. 1; E. Gniewek, *Commentary on Article 34*, [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Legalis 2019, marginal no. 2; A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 259; Z. Radwański, A. Olejniczak, *op. cit.*, p. 200; decision of the Supreme Court of 28 March 1995, I CRN 24/95, Legalis no. 29207.

[21] See E. Gniewek, *op. cit.*, marginal no. 3. Referred to also as *sui generis* bodies. See A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 258; judgment of the Supreme Court of 7 July 2006, I CSK 127/06, Legalis no. 77913; resolution of the Supreme Court of 28 November 2012, III CZP 75/12, Legalis no. 548611; decision of the Supreme Court of 26 April 2006, II CZ 23/06, Legalis no. 181985; judgment of the Court of Appeal in Warsaw of 25 May 2016, I ACa 1035/15, Legalis no. 1549639. The appropriate *statio fisci* is assigned to act in specific circumstances, on behalf of and for the benefit of the State Treasury by the legislature itself. However, it does so indirectly, by setting out in the legislative acts the scope of the responsibilities and powers of State organisational units in the sphere of public authority, while at the same time defining the area in which a given *statio fisci* may participate in civil-law relations. It should be borne in mind, however, that the activities of these organisational units as part of legal transactions should be treated as those of the State Treasury itself since *stationes fisci* are not separate entities governed by civil law. Consequently, as rightly pointed out in the literature and judicial decisions, a legal action of a State organisational unit is *de jure civili* an act performed by the State Treasury itself. See A. Doliwa, *Sposoby reprezentacji państwa w obrocie cywilnoprawnym*, "Studia Prawnicze" 2003, no. 4, p. 101; judgment of the Supreme Court of 11 May 1999, I CKN 1148/97, OSNC 1999, no. 12, item 205.

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not been endowed with bodies[22] within the meaning of Article 38 CC.[23] Examples of such state organisational units are: Chancellery of the Prime Minister, Chancellery of the Sejm, ministries, provincial offices, courts and prosecution units. Thus, it is these units that enter into civil law contracts on behalf of and for the State Treasury or manage land owned by it.

On the other hand, the State performs tasks in the sphere of *imperium* through the State authorities.[24] The currently applicable regulations provide for the existence of both single-member (monocratic) bodies, such as the President of the Republic of Poland, specific ministers, provincial governors, and multi-member (collegiate) bodies, such as the Sejm, Senate, Council of Ministers, National Broadcasting Council, Supreme Audit Office.[25] They act on behalf of and for the State using specific powers conferred on them by public law to exercise authority in the public interest.[26] Activities of these bodies consist primarily in issuing acts of a sovereign nature – both of a general nature, e.g. laws and regulations, as well as individual judgments, orders, administrative decisions, etc.[27] As can be seen, therefore, *stationes fisci* are treated under public law as offices providing services to specific state bodies (ministry to minister, Sejm Chancellery to the Sejm, provincial office to provincial governor, etc.),[28] which manifests the interpenetration within the internal structure of the state of the public-legal and private-legal spheres.

2. Issue of the existence of personal interests of the State Treasury

The analysis of the existence of personal interests of the State Treasury should begin by referring to the argument, accepted by scholars in the field, that the legal personality conferred on the State Treasury does not differ from that conferred on other juridical persons – it is not a legal personality *sui generis*.[29] It should therefore be treated in legal transactions on an equal footing with other juridical persons. This means that the civil rights and obligations of the State Treasury should not differ

[22] For other perspective, see Z. Radwański, A. Olejniczak, *op. cit.*, p. 202.

[23] Cf. A. Kubiak-Cyrul, *Commentary on Article 34*, [in:] *Kodeks cywilny. Komentarz*, ed. M. Załucki, Legalis 2019, marginal no. 1. See decision of the Supreme Court of 28 March 1995, I CRN 24/95, Legalis no. 29207.

[24] See K. Pospieszalski, *O pojęciu organu państwowego*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1972, no. 1, p. 23 ff.

[25] Cf. W. Skrzydło, [in:] *Polskie prawo konstytucyjne*, ed. W. Skrzydło, Lublin 2010, p. 186; K. Pospieszalski, *op. cit.*, p. 26.

[26] W. Skrzydło, *op. cit.*, pp. 185–186.

[27] Cf. E. Olejniczak-Szałowska, [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Warszawa 2013, p. 457.

[28] Cf. R. Michalska-Badziak, [in:] *Prawo administracyjne. Pojęcia…*, p. 270.

[29] N. Gajl, *op. cit.*, p. 176; A. Doliwa, *Dychotomiczny charakter…*, p. 47.

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from those of other juridical persons[30] – both in the financial and non-financial spheres, unless otherwise explicitly provided for in special provisions. An assertion to the contrary would infringe the principle of equal treatment of private individuals in the exercise of their legal capacity.[31]

In none of the currently applicable legal provisions, the legislature has negated the fact of existence of personal interests in any type or kind of legal entity. This means that these values are vested in all juridical persons,[32] irrespective of their legal form or object of activity,[33] from the moment of their establishment until the moment they lose their legal personality, i.e. the termination of their legal existence. As a result, while recognising the necessity of treating the State Treasury in the same way as any other juridical person in the non-property sphere, it is necessary to acknowledge the existence of personal interests of this entity.[34] Indeed, it would be unreasonable to narrow the private-law position of the State exclusively to its property rights.[35]

Analysing the definitions of the State Treasury cited at the beginning of the discussion, it may be observed that they emphasise primarily the aspect connected with property assets of that entity, while ignoring the issue of the possibility of vesting it with non-property interests and rights. Against the background of those concepts, especially among authors endorsing the thesis that the definition of the

[30] N. Gajl, *op. cit.*, p. 92. Restrictions on the extent of rights and obligations that juridical persons may enjoy are solely due to the nature of these entities, e.g. the lack of human qualities excludes them from family relationships, or directly due to special provisions, e.g. the impossibility of being the subject of easements of a personal nature. For more details, see A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 245.

[31] See A. Bierć, *op. cit.*, p. 65. Cf. J. Koczanowski, *Ochrona dóbr osobistych osób prawnych*, "Zeszyty Naukowe Akademii Ekonomicznej" 1999, no. 139, p. 84.

[32] E. Marcisz, *Dobra osobiste osób prawnych – uwagi na temat wykładni art. 43 KC*, "Monitor Prawniczy" 2011, no. 13, p. 708.

[33] A. Kubiak-Cyrul, *Dobra osobiste osób prawnych*, Warszawa 2005, p. 117.

[34] For other view, see R. Strugała, *Commentary on Article 43*, [in:] *Kodeks cywilny. Komentarz*, ed. E. Gniewek, Legalis 2021, marginal no. 4, where a statement has been presented that the State Treasury and local government units do not benefit from the protection provided for in Article 43 CC at all (although it is not clear whether this view denied to attribute personal rights at all, or whether it was only considered that these entities were not entitled to seek civil protection of these rights). In support of this position, it has been stated that private-law entities cannot, by their conduct, enter the sphere of activity of the State Treasury and local government units in such a way as to prevent them from functioning in a manner corresponding to the scope of their tasks. However, the judiciary has no doubt that the State Treasury can be an entity which violates the personal rights of another civil-law entity. See judgment of the Court of Appeal in Szczecin of 30 April 2014, I ACa 106/14, Legalis no. 1242054. See also resolution of the Supreme Court of 18 October 2011, III CZP 25/11, OSNC 2012, no. 2, item 15.

[35] A. Całus, *Problematyka prawna…*, p. 18. The author also pointed out that it would be justified to establish a special state body whose task would be to implement the protection of personal rights of the State Treasury, both in the substantive-law and judicial areas.

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Treasury is contained in Article 34 CC, doubts may arise as to the possibility of the existence of personal interests of the State Treasury. This provision, interpreted literally, limits the rights and obligations of that entity exclusively to the property sphere,[36] i.e. to rights and obligations concerning state property not belonging to other state juridical persons. However, a different interpretation of this provision should be accepted and it should be assumed that the wording of this regulation does not preclude the State Treasury from also having rights of a non-economic nature, including rights protecting its personal interests. It should be concluded that this provision serves the purpose of specifying which components constituting state property belong to the State Treasury.

As has already been pointed out, the State Treasury and the State are the same entity and therefore it is not possible to distinguish and separate from each other the public-law and private-law spheres within its internal organisational structure.[37] Moreover, persons outside the organisational structure of the State do not see this distinction between the State within the public-law meaning and the State Treasury being a party to civil-law relations. The general public perceives both the issue of judgments and the adoption of laws (the sphere of *imperium*) and the conclusion of contracts (the sphere of *dominium*) are identified with the State, without distinction in which sphere it operates. Thus, the opinion of such persons on the State's *modus operandi* refers to it as an indivisible whole. It is difficult to imagine a situation in which the same person, having learned of corruption in one of the central authorities of the state administration, loses confidence in the State as an authority holder, but at the same time considers that the civil-law tasks performed as a State Treasury are properly fulfilled – in some ways treating the State and the State Treasury as two separate entities.

In the light of the above considerations, and taking into account the definition of personal interests of juridical persons as non-property values that ensure the proper functioning and performance of tasks by these entities, it should be concluded that the protection of personal interests of the State Treasury should cover the performance of tasks by the State in the spheres of both *imperium* and *dominium*. A similar thesis has been approved in the case law in the matters of protection of personal interests of local government units. In many judgments, the courts used to argue that the violation of personal interests of a municipality, district or province occurs when statements of third parties may cause a loss of trust

[36] Cf. J. Koczanowski, *Ochrona dóbr…*, p. 84.

[37] See A. Całus, *op. cit.*, p. 13. That follows, according to the author, from the fact that the State is one indivisible whole. It should therefore be borne in mind that the organisational units of the State Treasury, as noted above, were established primarily to carry out public authority tasks (as public administration offices), and that in their case participation in civil-law relations is purely of a subsidiary nature. Cf. *ibidem*, p. 17. See A. Bierć, *op. cit.*, p. 295. For the concepts of public administrative office and public administrative body, see R. Michalska-Badziak, *op. cit.*, p. 275.

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in these units in the general public, which is necessary for the proper performance of their tasks.[38] The Supreme Court in a case for the protection of personal rights of a municipality stated that the personal interests of this juridical person might have been violated by allegations of third parties relating to the non-fulfilment or improper performance of its tasks under the provisions of the Act of 8 March 1990 on the Commune Self-Government[39] (Articles 6–9), containing both public-law and private-law regulations.[40]

3. Catalogue of personal interests of the State Treasury

Another issue to be discussed is the determination of what personal interests of juridical persons are vested in the State Treasury and what behaviours may lead to putting them at risk or to their violation. Due to the above-mentioned specific internal structure of the State, the addressee of these behaviours is the activity carried out by both *stationes fisci*[41] and state bodies.

The personal interest of juridical persons vested in the State Treasury is the name. In the case of this entity, the subject of this interest is a word sign under which the following operate: the State (the Republic of Poland, the State Treasury), as well as *stationes fisci* or state authorities, such as "Sejm", "Senate", a specific ministry, court or prosecutor's office.[42] A conduct affecting that interest may consist, i.a., in the use by another juridical person in legal transactions of one of the designated names of the state organisation, as well as of the same word sign as that assigned to an existing *statio fisci* or to a state body, with the risk of misidentifying the entities.[43] A view has been accepted in the literature that the means of protection of personal interests of juridical persons can provide adequate protection of the names of state bodies.[44] This issue, as has been noted, is important because these bodies,

[38] See, e.g., judgment of the Supreme Court of 11 January 2007, II CSK 392/06, LEX no. 276219; judgment of the Supreme Court of 17 July 2008, II CSK 111/08, Legalis no. 133166; judgment of the Supreme Court of 28 April 2016, V CSK 486/15, LEX no. 2076679.

[39] Consolidated text, Journal of Laws 2023, item 40, as amended.

[40] See judgment of the Supreme Court of 16 November 2017, V CSK 81/17, LEX no. 2440468.

[41] Cf. the facts of the case in the resolution of the Supreme Court of 7 April 2006, III CZP 22/06, OSNC 2007, no. 2, item 23, p. 16. It concerned the dissemination of unreliable information about the Supreme Audit Office, which is an organisational unit of the State Treasury. The Supreme Court held in the ruling that the addressees of statements or publications constituting infringement of the personal interests of the State Treasury may be not only natural persons and juridical persons but also organisational units of the State Treasury. In such a case, however, the personal interests of the State Treasury are violated.

[42] Judgment of the Supreme Court of 28 October 1998, II CKN 25/98, OSN 1999, no. 4, item 80.

[43] A. Kubiak-Cyrul, *Dobra osobiste…*, p. 153.

[44] See W. Lis, G. Tylec, *Ochrona prawna nazw organów ochrony bezpieczeństwa i porządku publicznego*, "Prawo i Więź" 2020, no. 2, p. 127.

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acting on behalf of and for the State, have the power to intervene in a sovereign manner in the sphere of freedoms and rights of other actors. Therefore, ensuring the protection of their names will prevent the unauthorized use of their names by other entities in order to pursue their specific interests, which may at the same time lead to undermining opinions not only on the functioning of these authorities but also on the State as a whole. The possibility to clearly link the action with a designated state body not only ensures security and certainty of legal transactions but also deepens citizens' trust in the State. As argued in the literature, the name is also violated in the event it has been distorted or ridiculed,[45] as well as used commercially for advertising and marketing purposes in order to unjustifiably claim approval of the activities carried out by certain state bodies.[46]

Another personal interest of juridical persons also enjoyed by the State Treasury is the good name, otherwise referred to as goodwill or reputation.[47] For practical reasons, topics relating to this value should be given the utmost attention in this study. The good name of a juridical person is equivalent to external dignity of a natural person and is therefore linked with the opinion others have about that person and his/her activities.[48] The conduct of third parties in breach of that value generally involve the dissemination of false information about the juridical person concerned which may undermine that person's reputation in the public perception, or involve the dissemination of statements in which the person is subjected to unfair criticism.[49] Moreover, as has been pointed out in case law, in order for a statement to be capable of affecting the good name of a juridical person, it must relate to the business of the juridical person concerned and have the effect of losing or diminishing confidence in the person concerned in the public perception.[50]

These remarks should also be applied to the good name of the State Treasury. At the same time, it should be borne in mind that in the case of this entity, this value may be infringed by statements concerning the performance of tasks from both the sphere of *imperium* and the sphere of *dominium*. In practice, therefore, they will most often concern the following matters: political, decision-making (including primarily the functioning of courts, prosecutors' offices or public administration

[45] Distortion or ridicule refers to situations in which the name is used so as to prevent the correct identification of the state organisational unit or state body concerned and to create an atmosphere around them which raises negative connotations for an average legal transactions participant. For more details, see A. Kubiak-Cyrul, *Dobra osobiste…*, p. 153.

[46] See W. Lis, G. Tylec, *op. cit.*, p. 137.

[47] See judgment of the Court of Appeal in Warsaw of 10 April 2019, I ACa 17/18, Legalis no. 2121579.

[48] A. Kubiak-Cyrul, *Dobra osobiste…*, p. 165; judgment of the Court of Appeal in Poznan of 30 March 2011, I ACa 204/11, Legalis no. 370212.

[49] Cf. K. Michałowska, *Dobre imię osoby prawnej w świetle orzecznictwa*, "Studia Oeconomica Posnaniensia" 2015, vol. 3(3), p. 14; A. Kubiak-Cyrul, *Dobra osobiste…*, p. 171.

[50] Cf. judgment of the Supreme Court of 28 April 2016, V CSK 486/15, LEX no. 2076679.

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bodies in terms of issuing by them sovereign decisions in individual cases), matters related to management of public funds, functioning of the public administration apparatus, etc.

When discussing the good name of the State Treasury, it is of key importance to identify the group of addressees of statements that may constitute an infringement of this value. It is beyond dispute that the reputation of the State Treasury will be violated if certain statements or opinions are addressed to a state organisation as well as *stationes fisci* or state bodies referred to in an abstract manner, i.e. by mentioning their name in a given statement.[51] Thus, e.g., suggesting that the Polish State or the State Treasury finances terrorist organisations with public money, a specific revenue office is corrupt, there is a practice of nepotism in a given ministry, unreliable judgments or decisions are issued in a specific court, will infringe the good name of the State Treasury.

There is no doubt in the scholarly opinion and case law that infringement of the good name of a juridical person may also take place in situations where negative statements or opinions are disseminated or expressed about natural persons who are members of the bodies of the juridical person, as well as persons otherwise connected with the functioning of the juridical person, e.g. its employees, partners, civil-law contract parties.[52] As aptly noted, the *sine qua non* condition for a juridical person to seek protection of personal interests in such cases is the existence of a clear link between such a statement and the performance by the natural person to whom the statement refers of tasks for the benefit of the juridical person.[53] Only then, the statement may negatively affect the public perception of the juridical person by other entities, entailing the undermining of trust in it and the tasks performed by it – and thus resulting in loss of reputation.

However, it should be noted that, as discussed above, the State Treasury was not equipped with bodies within the meaning of Article 38 CC. Their functions are performed by *stationes fisci*, while their tasks in the sphere of *imperium* are performed by state bodies. Therefore, it should be considered that the reputation of the State Treasury may also be violated if the addressees of criticism statements are natural persons performing the tasks of the state within the above-mentioned

[51] Cf. K. Riedl, *Naruszenie dobrego imienia osoby prawnej poprzez wypowiedzi dotyczące powiązanych z nią osób fizycznych*, "Przegląd Prawniczy Uniwersytetu Warszawskiego" 2017, no. 1, p. 142 ff.

[52] See, e.g., *ibidem*, p. 141; judgment of the Supreme Court of 17 July 2008, II CSK 111/08, Legalis no. 133166. Cf. judgment of the Supreme Court of 11 January 2007, II CSK 392/06, LEX no. 276219.

[53] See A. Kubiak-Cyrul, *Dobra osobiste…*, p. 173; K. Riedl, *op. cit.*, pp. 153–154; judgment of the Court of Appeal in Poznan of 10 July 2014, I ACa 444/14, Legalis no. 1061927; judgment of the Supreme Court of 9 May 2002, II CKN 740/00, Legalis no. 483264; judgment of the Supreme Court of 17 July 2019, IV CZ 101/19, Legalis no. 2490700.

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organisational structures and only if these statements at the same time have a real adverse effect on the perception of the State as a whole. Such natural persons will be those functioning publicly, e.g. public officials, members of civil service, state officials, politicians,[54] who, by performing tasks in political, economic or decision-making spheres, build the authority of the State in the public perception. Therefore, the good name of the State Treasury may also be violated by statements that consist in: formulating corruption allegations against individual persons performing state functions that are not substantiated by facts, unjustified allegations of incompetence against persons performing state functions, unjustified accusations of mismanagement or unreliability in the performance of duties, pointing to the biased attitude in certain persons in issuing or deciding certain rulings (judgments, orders, administrative decisions, etc.) – provided, however, that these statements will at the same time cause the State to lose its reputation in the public perception.[55] Moreover, it is correctly assumed in the relevant case law that corruption allegations in all circumstances should be considered as particularly harmful and detrimental to the good name of the defamation victim.[56] The Supreme Court, when examining a case for the protection of personal interests of a district (*powiat*), indicated that suggesting wrong conduct of district officials undermines the authority of the entire district and exposes it to the loss of trust among the local community.[57]

At first glance, these arguments may seem unfounded. Their approval may result in the granting of additional powers to the State which is already endowed with a number of sovereign measures which could be used in numerous factual situations. This is so because one can find the criticism of the functioning of the State and people functioning in the public sphere on a daily basis, especially in the media, press publications, web forums, etc. In order to resolve any doubts in this regard, it should be noted that, in accordance with Article 24 (1) CC, the illegality (presumed) of the act is also the condition for the protection of personal interests, in addition to these interests being at risk of infringement or being infringed.[58] When analysing the occurrence of this condition in cases relating to the protection of the good name of the State Treasury, it should be noted that Article 54 (1) of the Polish Constitution grants everyone the right to expression, which guarantees the

[54] For more details, see Z. Dobrowolski, *Administracja publiczna w Polsce. Zarządzanie. Zarys problematyki*, Kraków 2018, p. 97 ff. Cf. M. Wild, *Commentary on Article 61*, [in:] *Konstytucja RP*, vol 1: *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, margin no. 20.

[55] Cf. J. Koczanowski, *op. cit.*, p. 84.

[56] Judgment of the Court of Appeal in Katowice of 22 April 2015, I ACa 971/14, Legalis no. 1285432; judgment of the Supreme Court of 2 February 2011, II CSK 393/10, Legalis no. 422571.

[57] Judgment of the Supreme Court of 28 April 2016, V CSK 486/15, LEX no. 2076679; judgment of the Supreme Court of 17 July 2008, II CSK 111/08, Legalis no. 133166.

[58] See, e.g., Z. Radwański, A. Olejniczak, *op. cit.*, p. 180.

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freedom of speech and the acquisition and dissemination of information.[59] As has been pointed out in the case law, in the event of a conflict between the right to free speech and the right to protection of good name, in the circumstances of a particular case, the court may refuse to grant protection to personal interests.[60] It should be concluded that the above views of the judicature will be valid in situations where the criticism relate to the functioning of the State and to the fulfilment of state tasks by persons operating in the public sphere. This means that criticism, which would normally have been declared by the court unlawful, may not meet the above condition in cases relating to the protection of the State Treasury's personal interests, given the need to give priority to the protection of freedom of expression. This means that in the case of a personal interest in the form of good name, the scope of protection of the State Treasury will be narrower than for other juridical persons.

In support of these arguments, it should be noted that there is an established case law line in the judicature on the question of the unlawfulness of statements in cases where they are addressed to persons operating in the public sphere. As noted, these people should be more tolerant of their criticism.[61] It has been correctly assumed that those who choose to perform a public function should know that this entails greater recognition in a particular community, so that their actions will be commented on by both their supporters and opponents.[62] One should also agree with the view that the limits of permitted criticism directed at persons operating in the public sphere are even broader in cases where the discourse is carried out on the Internet. Since web forums often provide anonymity to their users, the comments posted on them are characterised by more expression than on average. However, in view of the right to open and unfettered public debate, stricter, often simplified and exaggerated opinions and assessments should be allowed.[63] But this does not invalidate the need to provide protection against personal interest infringements in cases where a given statement does not fall within an acceptable formula adopted in a given forum[64] – including the State Treasury, in cases where such criticism directly undermines the authority of the State.

[59] For more details on this topic, see L. Bosek, *Commentary on Article 54*, [in:] *Konstytucja RP*, vol. 1: *Komentarz do art. 1–86*, ed. M. Safjan, Legalis 2016, margin no. 10.

[60] Judgment of the Supreme Court of 13 January 2021, II CSKP 18/21, Legalis no. 2522862.

[61] Judgment of the Court of Appeal in Bialystok of 23 January 2020, I ACa 607/19, Legalis no. 2398590.

[62] Judgment of the Court of Appeal in Katowice of 14 August 2018, I ACa 77/18, Legalis no.1830603.

[63] Judgment of the Court of Appeal in Warsaw of 22 July 2021, I ACa 401/21, Legalis no. 2618132.

[64] Judgment of the Supreme Court of 8 July 2011, V CSK 665/10, Legalis no. 391466.

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It should also be noted that the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms,[65] in particular Article 10 thereof, and the case law of the European Court of Human Rights in Strasbourg (ECtHR) developed in the light of this provision of the ECHR are crucial for determining the limits of freedom of expression – and thus the permissible, non-infringing right to criticise the State and people functioning in the public sphere. The aforementioned Article 10 ECHR provides for freedom of expression, which consists of three elements as indicated by scholars: the freedom to hold opinions, the freedom to receive information and the freedom to communicate information.[66] It is vested in all subjects of civil law, conferring on them the right to freely present to external audiences whatever the author of the communication deems worthy of communication.[67] The ECtHR has repeatedly pointed out in its judgments that it is particular important for the exercise of that freedom to ensure an unhindered debate on matters of major public importance, including about the functioning of the State and its institutions.[68] A manifestation of this is the need to ensure that the margin of permissible criticism is wider for public persons and entities than for other juridical persons.[69]

It should also be noted that journalists are often the authors of statements concerning people who fulfil state functions. When assessing the possibility of bringing claims for the protection of personal interests against this professional group, it is worth pointing out that the case law assumes that there is a far-reaching freedom of journalists to exercise their freedom of expression, which allows them to use exaggeration, provocation or malice.[70] It should be remembered that, in accordance with Article 14 of the Polish Constitution, the Republic of Poland ensures the

[65] European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ETS no. 005, as amended, hereafter: the ECHR.

[66] L. Garlicki, *Commentary on Article 10*, [in:] *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności*, vol. 1: *Komentarz do artykułów 1–18*, ed. L. Garlicki, Legalis 2010, margin no. 2.

[67] See judgment of the ECtHR of 25 June 1992, 13778/88, Legalis no. 135530.

[68] See judgment of the ECtHR of 30 March 2010, 20928/05, Legalis no. 213999.

[69] Cf. M. Nowikowska, *Granice dozwolonej krytyki prasowej działalności osób pełniących funkcje publiczne*, Legalis 2020, chapter VII § 2.

[70] Judgment of the Court of Appeal in Poznan of 2 March 2017, I ACa 1006/16, Legalis no. 1594905. When assessing the issue of unlawfulness of infringement of personal interests by a press publication, one should also take into account the legal regulation of Article 12 (1) (1) of the Act of 26 January 1984 – Press Law (consolidated text, Journal of Laws 2018, item 1914), according to which a journalist is obliged to exercise particular care and diligence when collecting and using press material, in particular to check the accuracy of the information obtained or to state its source. As indicated in the case law, proving that the journalist acted for the sake of a socially justified interest and fulfilled the duty of due diligence and reliability when collecting and using the materials excludes the unlawfulness of the journalist's actions. See, e.g., judgment of the Supreme Court of 9 February 2018, I CSK 243/17, LEX no. 2483685.

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freedom of the press and other mass media, and this freedom, as indicated by the Constitutional Tribunal, is crucial for the functioning of a democratic state ruled by law.[71] The Court of Appeal in Bialystok aptly noted when considering a case concerning the protection of personal interests of a municipality that "the press is to breathe down the necks of local government or state authorities and inform the general public".[72] The case law of the ECtHR also notes that journalistic statements should be given special protection within the framework of freedom of expression.[73] The ECtHR has repeatedly stressed that the press plays a key role in developing freedom of expression by providing a forum for debate on matters of general interest,[74] and thus also on the functioning of the state and persons operating in the public sphere. It is therefore necessary to accept the claim that the media should be able to freely present a wide range of political, cultural, religious and social views, including the right to formulate also critical assessments and opinions on them.[75] Importantly, freedom of expression for journalists should include not only the right to publish information that is perceived as harmless or neutral, but also offensive, outrageous or disturbing, as is inherent in the nature of the press. Its task is to present information and views on topics and in a way that arouses public interest.[76] Therefore, the content of texts published by journalists will also often undermine the authority of the State. In such cases, the State should not be entitled to resort to the protection of its reputation, in particular where the acceptance of its claims would have the effect of limiting public debate and disrupting media pluralism. The protection of personal rights would then become an unacceptable instrument for the current government to discourage potential authors from making critical statements about the functioning of the State.[77]

The ECtHR has at the same time pointed out in its judgments, in the context of Article 10 ECHR, that the freedom of expression of criticism by the press is not, however, of an unlimited nature, as it may not infringe on the reputation that is also guaranteed to juridical persons under Article 8 ECHR.[78] Indeed, false statements and deliberate misrepresentation are not allowed, even if these statements concern public figures.[79] Hence, referring to Polish jurisprudence, it may be concluded that

[71] See judgment of the Constitutional Tribunal of 12 May 2008, SK 43/05, Legalis no. 97759.

[72] Judgment of the Court of Appeal in Bialystok of 13 November 2018, I ACa 88/18, Legalis no. 1880439.

[73] See M. Nowikowska, *op. cit.*, chapter II § 2.

[74] See, e.g., judgment of the ECtHR of 8 July 1986, 9815/82, Legalis no. 127834; judgment of the ECtHR of 20 May 1999, 21980/93, Legalis no. 1782319.

[75] See, e.g., judgment of the ECtHR of 26 November 1991, 13166/87, Legalis no. 135509.

[76] See judgment of the ECtHR of 7 December 1976, 5493/17, Legalis no. 127809.

[77] M. Nowikowska, *op. cit.*, chapter II § 2.

[78] As proposed by L. Garlicki, *Commentary on Article 8*, [in:] *Konwencja…*, margin no. 84; judgment of the ECtHR of 30 March 2004, 53984/00, Legalis no. 134101.

[79] M. Nowikowska, *op. cit.*, chapter V § 2.

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in order not to expose oneself to liability for infringing the personal interests of the State Treasury, a journalist's statement should be based on reliably obtained information and aimed at protecting a justified social interest.[80]

A special group of people operating in the public space who perform state duties are politicians: Sejm deputies, senators, ministers, etc. Criticism of the performance of tasks by this group is widespread. The case law has noted that persons undertaking political activities consciously and voluntarily expose themselves to the judgment of the public, and therefore they should expect much more far-reaching criticism about how they perform their duties than the average person. Consequently, when assessing whether a statement concerning such a person is unlawful, different criteria should be applied than when making such an assessment in relation to other persons, and especially the regard should be given to the right to freedom of expression.[81] This means that if negative statements are made against politicians, a given statement should be classified as unlawful be with caution. With regard to the possibility for the State Treasury to seek protection for personal interests in the event of criticism of politicians, it should be possible only in an exceptional way, when a given statement not only undermines the authority of a given person (which, of course, entitles the person to seek protection of their own personal interests within the meaning of Article 23 CC), but also at the same time of the entire State. Adopting another stance would lead to a significant reduction in public political discourse.

In the light of the discussion presented above, it should be assumed that in order for a statement made by a third party to constitute an infringement of the State Treasury's reputation, it must jointly meet four prerequisites. Firstly, it should concern tasks performed by the State in the spheres of *imperium* or *dominium*. Secondly, it must result in a real likelihood of loss of confidence in the State in the eyes of the public, negatively impacting on its proper functioning as part of the duties entrusted to it. Thirdly, it must be directed at activities carried out within *stationes fisci*

[80] Judgment of the Court of Appeal in Bialystok of 2 February 2018, I ACa 727/17, Legalis no. 1728477; judgment of the Court of Appeal in Krakow of 24 April 2013, I ACa 294/13, Legalis no. 804571. If the information turns out to be incorrect, the unlawfulness may only be excluded by proving that particular diligence was ensured in collecting it. Cf. judgment of the Supreme Court of 14 May 2003, I CKN 463/01, Legalis no. 59868. The dissemination of information on individual facts or recurring events relating to an unspecified group of people or society as a whole and from their point of view merits interest, including support or criticism, was considered acting in social interest. See judgment of the Supreme Court of 8 February 2008, I CSK 334/07, Legalis no. 150540. See also a different view, that that diligence and reliability in the collection of press material does not preclude in advance the unlawfulness of the infringement of personal interests – Z. Radwański, *Glosa do wyroku SN z dnia 14 maja 2003 r., I CKN 463/01*, LEX.

[81] Judgment of the Court of Appeal in Szczecin of 19 November 2019, I ACa 314/19, Legalis no. 2299462; judgment of the Court of Appeal in Warsaw of 22 July 2021, I ACa 401/21, Legalis no. 2618132.

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or state bodies in the abstract sense and towards natural persons performing state tasks within those structures. The fourth requirement is the unlawfulness of such statement, taking into account the broader limits of permissible criticism directed towards the state and persons functioning in the public space.

In the context of the deliberations on the good name of the State Treasury, it is worth noting the situation that took place in 2019. At that time, the Ministry of Justice announced its intention to sue professors and doctoral students from the Jagiellonian University, who were also members of the Krakow Institute of Criminal Law (Krakowski Instytut Prawa Karnego, KIPK), who developed a critical expert opinion on one of the amendments to the Criminal Code prepared by the Ministry.[82] According to the expert opinion, "as a result of the adoption of this amendment, the provisions on bribery in the public sector (Article 228 of the Criminal Code,[83] Article 229 of the Criminal Code) may not apply to persons managing the largest strategic commercial companies with State Treasury shareholding, which leads to gross legal inequalities and unjustified privileges for certain economic operators". As a consequence, this could lead to a situation where, according to the authors of this expert opinion, the president of the management board of PKN Orlen SA could not be held criminally liable for bribery in the public sector, while such liability could be imposed, e.g., on the president of a waste disposal municipal company in a small rural commune.[84] In response to the cited expert opinion, the Ministry of Justice issued a communiqué,[85] the last paragraph of which contained the following statement: "The Ministry of Justice will sue professors and doctoral students of the Krakow university for lying, in defence of its good name, in defence of the Polish justice system, and in defence of the reputation of the Jagiellonian University itself, as there are intransgressible limits to criticism and political disagreement".[86]

In this case, it would be completely unfounded for the Ministry of Justice (as a *statio fisci* of the State Treasury) to bring an action for protection of the personal

[82] See the government's bill on amendment of the Criminal Code and certain other acts, Sejm Papers no. 3451.

[83] Act of 6 June 1997 – Criminal Code (consolidated text, Journal of Laws 2024, item 17).

[84] See Krakowski Instytut Prawa Karnego Fundacja, *Opinia do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu 16 maja 2019 r.*, 9.6.2019, https://kipk.pl/wp-content/uploads/2021/08/opinia2_nowelizacja2019.pdf (access: 10.5.2023).

[85] See Ministerstwo Sprawiedliwości, *Ministerstwo Sprawiedliwości dementuje nieprawdziwe informacje na temat nowelizacji reformy prawa karnego*, 15.6.2019, https://www.gov.pl/web/sprawiedliwosc/ministerstwo-sprawiedliwosci-wytoczy-proces-cywilny (access: 10.5.2023).

[86] Notabene, this fragment has been removed from the content of the communiqué after numerous critical voices. See, e.g., M. Gutowski, P. Kardas, *Minister sprawiedliwości nie mógłby wygrać procesu z krakowskimi naukowcami*, 13.7.2019, https://www.rp.pl/opinie-prawne/art1232751-minister-sprawiedliwosci-nie-moglby-wygrac-procesu-z-krakowskimi-naukowcami (access: 10.10.2024).

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interests of the State Treasury. It must be pointed out that the objections concerning the draft amendment were made in the context of substantive scientific discourse and were therefore not unlawful.[87] As a side note it should be mentioned that the Ministry of Justice would not have standing to seek protection of both the good name of the "justice system" (regardless of what the authors of the communiqué understood) and the reputation of the Jagiellonian University, which has a separate legal personality from the State Treasury and which has its own personal interests.[88]

The personal interests of juridical persons vested in the State Treasury include also inviolability of premises[89] and secrecy of correspondence.[90] The first of these interests – inviolability of premises, covers the entire space within which the state organisation carries out its tasks – both under the public law and the private law.[91] Thus, these will be, e.g., the buildings of the Sejm and Senate, ministries, courts, prosecutor's offices, provincial offices, revenue offices, etc. The infringement of the interest in question occurs when an unauthorised person enters the premises of an entity in which the entity carries out its activities or when individuals who are entitled to do so are prevented from using the premises.[92] Furthermore, scholars in the field point out that the inviolability of premises is also infringed when eavesdropping devices or hidden cameras are unlawfully installed in these premises in order to illegally obtain information.[93]

On the other hand, the protection of personal interests in the form of secrecy of correspondence ensures the confidentiality of the information being sent and prevents unauthorized access to it.[94] The violation of a personal interest in the form of secrecy of correspondence may occur in the case of any juridical person – including the State Treasury – by providing the mailing to unauthorized persons, viewing it by such persons, unlawful use of information contained therein, distortion of its content,[95] destruction of correspondence and preventing reaching the addressee.[96] It also seems appropriate to accept the thesis that the value concerned may be violated not only by deliberate dissemination of the correspondence to unauthorized persons,

[87] See, e.g., judgment of the District Court in Warsaw of 17 May 2019, XXV C 763/17, Legalis no. 2505753.

[88] See W. Szczotka, *Dobra osobiste uczelni publicznej*, "Annales UMCS sectio G (Ius)" 2020, vol. 67(1), p. 115 ff.

[89] See judgment of the Court of Appeal in Warsaw of 9 February 2007, VI ACa 960/06, Legalis no. 148510.

[90] Judgment of the Court of Appeal in Warsaw of 20 October 2014, I ACa 456/14, Legalis no. 1163301.

[91] See A. Kubiak-Cyrul, *Dobra osobiste…*, p. 186.

[92] J. Koczanowski, *op. cit.*, p. 118.

[93] A. Kubiak-Cyrul, *Dobra osobiste…*, p. 187.

[94] J. Koczanowski, *op. cit.*, p. 128.

[95] J. Frąckowiak, *op. cit.*, p. 1083.

[96] J. Koczanowski, *op. cit.*, p. 136.

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but also by failing to exercise due diligence when transmitting it, and thus in a way that allows unauthorized persons to obtain it. An example of such behaviour is the use of unsecured private means of communication, e.g. an e-mail inbox, to provide information related to the activities of a juridical person, despite the existence of an obligation to use official, appropriately protected means of communication, which is particularly important in the case of the functioning of the State. This means that the secrecy of correspondence may be violated by persons who are both inside and outside the organisational structure of the juridical person. It should also be stressed that in the case of the State Treasury, all correspondence, regardless of its content, will be protected, regarding the fulfilment of tasks both in the sphere of *imperium* and in the sphere of *dominium*.

Despite the doubts among scholars and the judicature, privacy must be regarded as another of the basic types of personal interests of juridical persons.[97] This value is manifested in the existence of a sphere reserved exclusively for a specific entity, which must remain free from external interference.[98] In that sense, the object of that interest is the intention not to disclose certain information related to the performance of the tasks of the juridical person concerned.[99] This value is primarily intended to provide juridical persons with the opportunity to distinguish themselves from others and to pursue individual objectives and interests in commercial transactions.[100] It must also be assumed that, in order to acknowledge the existence of a privacy sphere with a particular entity, it is necessary for it to be able to decide independently, without external interference, what information on that subject will be made available to third parties.

However, there are a number of statutory provisions in the Polish legal system which require certain types of juridical persons to disclose certain information about their activities and which exclude in certain situations the possibility of invoking the right to privacy.[101] In the case of juridical persons governed by public law, including the State Treasury, it must be concluded that such information obligation is broad to the extent that they do not have personal interest in the form of privacy.[102] In support of this argument, Article 61 of the Polish Constitution must

[97] See, e.g., M. Cieśla, *Prywatność osoby prawnej jako jedno z jej dóbr osobistych*, "Rejent" 2007, no. 4, p. 148 ff.; A. Kubiak-Cyrul, *Dobra osobiste…*, p. 178; judgment of the Court of Appeal in Katowice of 2 February 2014, V ACa 690/13, Legalis no. 831368.

[98] Ruling of the Constitutional Tribunal of 24 June 1997, K 21/96, OTK 1997, no. 2, item 23.

[99] Cf. J. Frąckowiak, *op. cit.*, p. 1083. As the author rightly notes, it is necessary to distinguish between information that a given entity wants to keep secret and intellectual property rights, e.g. inventions, industrial designs, utility models, know-how, etc.

[100] A. Kubiak-Cyrul, *Dobra osobiste…*, p. 189.

[101] See, e.g., Article 4 of the Press Law and Article 8 (1) and (2) of the Act of 20 August 1997 on the National Court Register (consolidated text, Journal of Laws 2023, item 685, as amended.

[102] Cf. A. Kubiak-Cyrul, *Dobra osobiste…*, p. 198.

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be invoked, according to which public authorities have a constitutional obligation to disclose information about their activities to citizens, both in the field of public and private law. That obligation covers, as stated in the literature, all the activities of public authorities[103] and is manifested, e.g., by the need to present documents relating to their tasks. The rules governing the provision of that information and its limitations are laid down in the Act on Access to Public Information.[104] Under the provisions of that law, the right to obtain public information has a very broad scope. According to Article 1 API, it covers any information on public matters and therefore, as indicated in the literature, concerns any manifestation of the activity of public authority, its bodies, persons performing public functions, especially those relating to the performance of public tasks and the management of state assets.[105]

The specific nature of the State Treasury as a juridical person, discussed in this study, indicates that each activity undertaken by this entity is a public activity. Therefore, the State Treasury may refuse to provide information only if there is a special statutory provision exempting this entity from providing it. The first of such restrictions is provided for in Article 5 (2) API, which states that a refusal to provide public information may take place for the considerations of privacy of a natural person or business secret. Thus, according to the linguistic interpretation of this provision and the principle that exceptions cannot be interpreted in an extensive manner, the legislature did not cover the privacy of juridical persons by protection. Under this provision, juridical persons may therefore refuse to provide public information only by invoking a business secret, which is not possible for the State Treasury due to the lack of the status of a business operator. The second reason for refusing to provide public information is, pursuant to Article 5 (1) API, the possibility to invoke the protection of classified information and the protection of statutorily protected secrets. This applies, i.a., to documents containing classified information covered by one of the security classifications,[106] the disclosure of which could lead to a threat to national security. It should be noted, however, that this legal basis – as any other one contained in special regulations under which the State Treasury would be entitled to refuse to provide information – does not automatically result in the creation of a sphere of privacy in a given entity. As has been observed, in order for a juridical person to be recognized as having the value at issue, it is necessary for that juridical person to have autonomy, and thus to be free to determine its legal situation in relation to the provision of certain informa-

[103] See M. Wild, *op. cit.*, margin no. 17.

[104] Act of 6 September 2001 on access to public information (consolidated text, Journal of Laws 2022, item 902), hereinafter: API.

[105] For more details, see A. Piskorz-Ryń, *Dostęp do informacji publicznej – zasady konstrukcyjne ustawy*, "Kwartalnik Prawa Publicznego" 2002, no. 4, p. 183.

[106] See Article 5 of the Act of 5 August 2010 on the protection of classified information (consolidated text, Journal of Laws 2023, item 756, as amended).

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tion. As regards the State Treasury, such an area cannot be determined because the entity has not been granted any information autonomy, as the State is, in principle, obliged to provide information to its citizens. As a result, it must be assumed that privacy does not constitute another personal interest vested in the State Treasury, which confirms the research hypothesis put forward at the outset, according to which the catalogue of personal interests of the State Treasury is narrower than that of other juridical persons.

4. Selected aspects of the protection of personal interests of the State Treasury and non-property assets vested in the Polish State

There should be no doubt that the State Treasury may protect its personal interests using civil law remedies to the same extent as other juridical persons. Due to the vastness of this study, remarks in this regard will be limited to the enumeration of these measures and the indication of important issues in the procedural sphere. The first of these is the non-property claim for refraining from infringement, under Article 24 § 1 first sentence CC, which the personal interests holder may file both in the case of a threat to personal interests and after their infringement. On the other hand, the non-property claim, which may be used by the State Treasury only after the infringement of these interests, is, pursuant to the second sentence of Article 24 § 1 CC, the demand to eliminate the consequences of the infringement, which consists, in particular, in the infringer making a statement of appropriate content and form. In the case of a culpable infringement of personal interests, the State Treasury will also be entitled to a claim for damages based on general principles (where pecuniary damage has been incurred) and a claim under Article 448 CC for pecuniary compensation and imposing the obligation to pay an appropriate sum of money for a specific social purpose (in the case of non-pecuniary damage).[107]

On the other hand, as regards the formal issues of the process of seeking these claims, both at the pre-litigation stage and in a possible trial stage, the State Treasury would be replaced by the state organisational unit, the operation of which would be directly linked to the conduct of a third party constituting a threat to or infringement of personal interest. Thus, e.g., in the event of unlawful installation of video cameras at the premises of the *statio fisci* concerned, it will be the latter who will stand as the representative of the State Treasury for infringement of the

[107] For more details on these means of protection of personal interests, see A. Kubiak-Cyrul, *Dobra osobiste…*, p. 227 ff.; A. Wolter, J. Ignatowicz, K. Stefaniuk, *op. cit.*, p. 256. With regard to claims under Article 448 CC, see judgment of the Supreme Court of 24 September 2008, II CSK 126/08, Legalis no. 118211. Moreover, as pointed out by scholars in the field, a remedy serving the protection of personal interests which may also be used by juridical persons, is an action to determine the existence or non-existence of a right or legal relationship, regulated under Article 189 of the Civil Procedure Code. See Z. Radwański, A. Olejniczak, *op. cit.*, p. 184.

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integrity of the premises. It should be noted that, since the state authorities do not have the capacity to be a party to judicial proceedings, the State Treasury could not be represented by such a body in the process because of a lack of standing to bring proceedings. In such cases, in accordance with Article 67 § 2 of the Civil Procedure Code,[108] the State Treasury should be represented by the *statio fisci* linked with the performance of tasks by a given state body[109] – in the case the offence is directed against e.g. the Sejm – claims would be pursued by the Sejm Chancellery, the Minister – by the Ministry, the province – by the provincial office, etc. It should also be borne in mind that, in the light of the provisions of Article 67 § 1[1] CPC, the above rules will be modified if there are conditions for representation of the State Treasury by the Attorney General's Office of the Republic of Poland.[110] In addition, it should be borne in mind that, in accordance with Article 55 CPC, an action for the protection of personal interests of the State Treasury may also be brought by a public prosecutor.

When discussing issues related to personal interests of the State Treasury, one should also mention the legal regulations contained in Chapter 6c of the Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation.[111] In accordance with Article 53o first sentence of this Act, the personal interests protection provisions of the Civil Code apply to the protection of the good name of the Republic of Poland and the Polish Nation. Against the background of the above legislation, a thesis has been proposed in the literature that the good name of the Republic of Poland and the Polish Nation, despite its terminological affinity, is not a personal interest within the meaning of Article 23 CC, but constitutes a public value.[112] However, it was

[108] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2023, item 1550, as amended), hereinafter: CPC.

[109] According to the regulation of Article 6 (2) of the Act of 16 December 2016 on the rules of state property management (consolidated text, Journal of Laws 2024, item 125), the State Treasury is represented by heads of state offices within the scope of property acquired and entrusted to them and other tasks performed by individual offices. Thus, the legislature did not create a single, centralised entity that would be entitled to represent the State Treasury in all civil-law relations, but adopted a system of so-called dispersed representation of the State Treasury, which applies to both the substantive-law and procedural spheres. See A. Kubiak-Cyrul, *Commentary on Article 34…*, margin no. 3. Consequently, the representation of a *statio fisci* in civil law relations will be performed by natural persons acting as managing bodies of those entities which, in a given factual state, are competent to act on behalf of and for the benefit of the State Treasury. Cf. judgment of the Court of Appeal in Warsaw of 25 May 2016, I ACa 1035/15, Legalis no. 1549639.

[110] For cases where the State Treasury is replaced by the Attorney General's Office of the Republic of Poland, see Chapter 2 of the Act of 15 December 2016 on the Attorney General's Office of the Republic of Poland (consolidated text, Journal of Laws 2023, item 1109).

[111] Consolidated text, Journal of Laws 2023, item 102, as amended, hereinafter: the Act on the IPN.

[112] It should further be noted that, according to the views of constitutionalists, the basic non-property value of a public law nature, which is not a personal interest within the meaning of civil law,

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considered that due to the similar nature of such non-material values as good name as a personal interest and the good name of the Republic of Poland and the Polish Nation, in determining whether the conduct constitutes a violation or threat to the good name of the Republic of Poland or of the Polish Nation and whether it is unlawful, it is necessary to use the scholarly achievements and the judicature in the field of personal interests as an auxiliary source.[113] For the same reason, although it is not a personal interest, the legislature has made it possible to apply to the protection of that value the protective claims that are provided for personal interests.

As pointed out in the literature, the provisions of Chapter 6c of the Act on the IPN are currently one of the basic instruments for the protection of historical remembrance.[114] When identifying cases in which the good name of the Republic of Poland or the Polish Nation may be violated, reference should be made, as an auxiliary source, to the purpose of the Act on the IPN as specified in its preamble. It lists the tasks of the Institute, including the obligation to cultivate the memory of the victims and heroes of the fight against the occupiers during World War II and the fight for the independent existence of the Polish State after the war, the need to prosecute crimes against peace and humanity and war crimes and to ensure reparation for their victims, as well as the need to reveal the unlawful actions of the communist state. Consequently, the reputation of the Republic of Poland or the Polish Nation will be, in particular, violated in cases of: imputing responsibility for

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is the common good from Article 1 of the Polish Constitution, according to which the Republic of Poland is the common good of all citizens. See L. Bosek, *Commentary on Article 218…*, margin no. 36. Sanctions for its violation are contained in criminal law, specifically in Chapter XVII of the Criminal Code (Articles 127 to 139), titled "Offences against the Republic of Poland". The protection under the above-mentioned provisions covers the Republic of Poland – an entity of public law, ensuring the existence and security of the population residing on its territory, equipped with a specific political and economic apparatus. See judgment of the Constitutional Tribunal of 19 September 2008, K 5/07, OTK-A 2008, no. 7, item 124; judgment of the Constitutional Tribunal of 6 July 2011, P 12/09, OTK-A 2011, no. 6, item 51. As emphasized by the Constitutional Tribunal in its judgment of 6 July 2011 (P 12/09), the protection of the Polish State occupies a prominent position in the special part of the Criminal Code. These provisions penalise such offences as coup d'état (Article 127 of the Criminal Code), attack on a constitutional body of the Republic of Poland (Article 128 of the Criminal Code), insulting the Polish Nation or the Polish State (Article 133 of the Criminal Code; this provision is applied, i.a., in situations of unlawful, insulting use of the name of the State, i.e. the Republic of Poland, by third parties (cf. K. Wiak, *Commentary on Article 133*, [in:] *Kodeks karny. Komentarz*, ed. A. Grześkowiak, Legalis 2021, margin no. 3), and public insult to a state symbol or sign (Article 137 of the Criminal Code). See also L. Bosek, *Commentary on Article 218…*, margin no. 36.

[113] B. Lackoroński, *Cywilnoprawna ochrona dobrego imienia Rzeczypospolitej Polskiej i Narodu Polskiego (art. 53o–53q ustawy o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu)*, [in:] *Odpowiedzialność za negowanie zbrodni międzynarodowych*, ed. P. Grzebyk, Warszawa 2020, p. 137; A. Pyrzyńska, *Cywilnoprawna ochrona dobrego imienia Rzeczypospolitej Polskiej i Narodu Polskiego w świetle ustawy o Instytucie Pamięci Narodowej*, "Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu" 2019, no. 4, p. 27.

[114] A. Pyrzyńska, *op. cit.*, pp. 24–25.

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war crimes to the Polish Nation or State (e.g. by the phrase "Polish death camps"), distorting historical facts (e.g. by ascribing to Poland the responsibility for initiating World War II or accusing Poland of collaboration with the occupier), defining the Polish Nation by referring to the terms associated with totalitarian regimes (e.g. as Nazis, fascists or communists), ascribing negative attitudes (e.g. accusing of xenophobia). Moreover, it should be recognized that the scope of application of the provisions of Chapter 6c of the Act on the IPN cannot be limited to statements referring only to periods from the history of Poland from decades or centuries ago. Statements about the present day may also violate the good name of a nation or state. As a result, in the event of, e.g., imputing that Poland or Poles support or actively participate in the invasion of the Russian Federation on the territory of Ukraine launched in February 2022, there will also be a violation of the good name of the Polish Nation and the Polish State. Moreover, a thesis should be put forward that when assessing whether there has been a breach of the said value, objective criteria should be taken into account, i.e. whether a given statement undermines the good name of the Polish State or the Polish Nation without the need to refer to the feelings of individual people.

As noted by scholarly opinion, when examining the accuracy and veracity of a third party's statement in the context of a possible exclusion of unlawfulness of the infringement committed, courts will often have to rely on reliable scientific studies based on documented facts.[115] Studies prepared by individuals having expertise in the field of historical sciences may prove valuable. Moreover, it should be considered that unlawfulness of the threat to or violation of the good name of the Republic of Poland or of the Polish Nation will be excluded if it is proved that the person concerned acted within the framework of their constitutional freedoms – above all freedom of expression under Article 54 (1) of the Polish Constitution and freedom of artistic creation, research, publishing their results and teaching under Article 73 of the Polish Constitution.

As the value in question is protected using a civil law claim, it should be pursued in a civil lawsuit, despite its public-law nature. An action for protection of the good name of the Republic of Poland or the Polish Nation may be brought, pursuant to Article 53o second sentence of the Act on the IPN, by a non-governmental organisation within the scope of its statutory tasks, and also, in light of Article 53p of the Act on the IPN, by the Institute of National Remembrance, which has been granted the capacity to be a party to court proceedings in these cases. Scholars in the field point out that the actions in question may also be brought by those *stationes fisci* of the State Treasury whose activities the violation in question concerns, as well as

[115] B. Lackoroński, *op. cit.*, p. 141.

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by public prosecutors.[116] The provisions of Chapter 6c of the Act on the IPN allow, in the case of an infringement of the good name of the Republic of Poland or the Polish Nation, to pursue all claims for the protection of personal interests provided for in the Civil Code, i.e. those regulated in Articles 24 and 448 CC. However, despite the wide range of entities with legal standing in such cases, Article 53o third sentence of the Act on the IPN provides that compensation or reparation may be awarded only to the State Treasury.

CONCLUSIONS

To conclude the considerations presented herein, it should be pointed out that the State Treasury, like any juridical person, has personal interests. Due to the specific internal organisational structure of this entity, the possibility of a threat to or violation of these values should be associated with the performance of tasks by *stationes fisci*, and state bodies, i.e. tasks from the spheres of *dominium* and *imperium*. The State Treasury is entitled to such personal interests of juridical persons as: name, good name (reputation), inviolability of premises and secrecy of correspondence. Unlike other legal entities, the State Treasury is not entitled to any personal interest in the form of privacy. Although the State Treasury may use all civil-law remedies to protect these non-property values on the same terms as other juridical persons, the considerations carried out above indicate that situations in which this entity may seek protection of personal interests are limited as compared to other juridical persons. This is especially noticeable with regard to a good name, for which the scope of acceptable criticism of the State is much broader than that of other juridical persons.

As it has been established, the currently formulated definitions of the State Treasury in most cases refer to the property aspect of the functioning of that entity under Article 34 CC, while failing to refer to the possibility of the State Treasury being entitled to non-property interests. In order to avoid a possible narrowing of the essence of the State Treasury exclusively to the property owned by it, it is necessary to correct the interpretation of Article 34 CC and to assume that that provision is aimed exclusively at specifying which components of State property belong to the State Treasury.[117] On the other hand, in no way can it be regarded as a provision containing a definition of that entity.

[116] It is also argued that Article 53o second sentence of the Act on the IPN does not introduce an *actio popularis*, i.e. an action that can be brought by any citizen in order to initiate a private lawsuit against a person responsible for infringing the public interest and to obtain from that person the payment of a monetary penalty to the complainant. See more on this topic: *ibidem*, pp. 144–146.

[117] L. Bosek, *Commentary on Article 218…*, marginal no. 35.

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ABSTRAKT

W opracowaniu analizie naukowo-badawczej poddane jest zagadnienie z zakresu części ogólnej prawa cywilnego, dotyczące dóbr osobistych osób prawnych. Przeprowadzone rozważania pozwolą ustalić, czy Skarbowi Państwa – szczególnej osobie prawnej, której substratem jest samo państwo, a więc podmiot prawa publicznego – przysługują wskazane wartości niemajątkowe. Potrzeba omówienia zasygnalizowanego problemu – istotnego z punktu widzenia praktyki – wynika stąd, że nie został on jeszcze rozstrzygnięty w żadnym odrębnym opracowaniu. W artykule w pierwszej kolejności przedstawione są rozważania na temat istoty dóbr osobistych osób prawnych oraz podmiotowości prawnej Skarbu Państwa. Dopiero na ich tle możliwe jest udzielenie – jak się okazuje – twierdzącej odpowiedzi na wyżej sformułowane pytanie. W związku z uznaniem, że Skarb Państwa posiada dobra osobiste, w opracowaniu trzeba poruszyć kilka wybranych zagadnień o charakterze szczegółowym. Należy ustalić, czy ochrona dóbr osobistych Skarbu Państwa powinna dotyczyć wyłącznie wykonywania przez państwo zadań prywatnoprawnych, tj. z zakresu *dominium*, czy też objęte tą ochroną są działania władcze zaliczane do sfery *imperium*. Ponadto trzeba rozstrzygnąć, które dobra osobiste

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osób prawnych przysługują Skarbowi Państwa oraz jakie zachowania – w przypadku tego podmiotu – mogą prowadzić do ich zagrożenia lub naruszenia. Jako niezbędne jawi się również dokonanie analizy zasad i środków ochrony dóbr osobistych Skarbu Państwa, a także przytoczenie i omówienie przepisów zawartych w ustawie o Instytucie Pamięci Narodowej, dotyczących ochrony wartości o charakterze publicznoprawnym w postaci dobrego imienia Państwa Polskiego i Narodu Polskiego.

Słowa kluczowe: dobra osobiste; Skarb Państwa; państwo; osoba prawna; wartości niemajątkowe; *stationes fisci*

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