

## CASES CONCERNING THE MINISTRY OF JUSTICE IN THE LEGAL PRACTICE OF THE NATIONAL PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF POLAND IN 1919-1939

Dr. habil. Marek Tkaczuk, University Professor

University of Szczecin, Poland

e-mail: [marek.tkaczuk@usz.edu.pl](mailto:marek.tkaczuk@usz.edu.pl); <https://orcid.org/0000-0001-9511-813x>

**Abstract.** The aim of this paper is to present the most important activities of the National Public Prosecutor's Office of the Republic of Poland in cases concerning operation of the Ministry of Justice, one of the many agendas of the legal practice of the National Public Prosecutor's Office of the Republic of Poland, a centralised state organ of legal representation of material and public interests of the Polish state in the period of the Second Polish Republic. The legal practice of the National Public Prosecutor's Office covered legal representation before private law or public law courts and in proceedings carried out by administration authorities, issuing legal opinions on request of public authorities or other authorised entities, and collaboration in executing agreements in material matters of the state or of entities entrusted by virtue of the law to the legal care of the Office. In cases concerning the Ministry of Justice, the National Public Prosecutor's Office undertook all types of office-related activities. This study presents an analysis of yearly reports of the President of the National Public Prosecutor's Office, jurisprudence and rulings from courts and tribunals issued on the initiative of the Office. The research results demonstrate that the activity of the Office contributed to protection of material and public law interests in Poland reborn after the period of partitions in the context of operation of the Ministry of Justice.

**Keywords:** Second Polish Republic; State Treasury; Ministry of Justice; legal representation; material and public interests of the state.

### INTRODUCTION

The National Public Prosecutor's Office of the Republic of Poland<sup>1</sup> was appointed in the organizational system of a reborn Polish state under the decree of the Temporary Chief of State of 7 February 1919. As part of unifying sources of the Polish law, on 31 July 1919 the Legislative Sejm revoked the decree on appointing the National Prosecutor's Office and enacted an act that replaced the thus far binding normative act [Buczyński and

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<sup>1</sup> Hereinafter: Office.

Sosnowski 2016, 119].<sup>2</sup> This founded a system of concentrated legal protection of material and public law interests of the state in Poland [Bendetson 1951, 243]. As part of the savings programme carried out by the government of the Republic of Poland, intended to repair the operation of the State Treasury, the National Public Prosecutor's Office was reorganized in 1924. A regulation with the force of a statute of the President of the Republic of Poland provided a legal basis of the operation of the Office [Tkaczuk 2007, 288].<sup>3</sup> The National Public Prosecutor's Office in the inter-war Poland was a state body which, under statutory acts, provided on-going legal assistance to the Polish state and other entities treated equally with the state when it came to material and public interests [Idem 2001, 151-60; Idem 2006, 725-37; Idem 2007, 285-302; Organiściak 2002, 141-54].<sup>4</sup> The Office's broad scope of the legal subject matter may be studied on the basis of reports issued yearly by the President of the Office,<sup>5</sup> reports of presidents of Branches of the Office, of delegates of the Offices and of managers of departments at the Office's branches and in case files of individual cases maintained by officials of the National Public Prosecutor's Office of the Republic of Poland, which are kept in the Polish archives.<sup>6</sup> The legal practice of the Office in the inter war period covered activities taken up in many cases which, were

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<sup>2</sup> Decree of the Chief of State of 7 February 1919 on establishing the National Public Prosecutor's Office of the Republic of Poland, Journal of Laws No. 14, item 181; Act of 31 July 1919 on establishing the National Public Prosecutor's Office of the Republic of Poland, Journal of Laws No. 65, item 390.

<sup>3</sup> Decree of the President of the Polish Republic of 9 December 1924 on changing the organizational system of the National Public Prosecutor's Office of the Republic of Poland, Journal of Laws No. 107, item 967.

<sup>4</sup> Archive of New Acts – Presidium of the Council of Ministers, ref. no. 56-15, Document of 13 May 1919 – Principles of the Decree establishing the National Public Prosecutor's Office presented to the Minister of the Interior by the President of National Public Prosecutor's Office; order of the First Chamber of the Supreme Court of 7 February 1921, ref. no. C.932/20 – recital 6: The National Public Prosecutor's Office of the Polish Republic shall be treated as a statutorily established permanent general representative of the State Treasury (“Orzecznictwo Sądów Polskich” C. item 185).

<sup>5</sup> Pre-war reports of the President of the National Public Prosecutor's Office of the Polish Republic are dispersed. A review of acts in the archives, such as the Archive of New Acts in Warsaw or the State Archive in Poznań, allowed me to collect individual reporting annals. The library of the Chair of the History of Law of the Faculty of Law of the University of Szczecin houses reports for the following years: 1919, 1920, 1921, 1922, 1925, 1926, 1928, 1929, 1930, 1931, 1933, 1934, 1935, 1936, 1937, 1938.

<sup>6</sup> Reports of presidents of branches of the National Public Prosecutor's Office, delegates of the National Public Prosecutor's Office and managers of divisions and case files of individual cases may be found, for example, in archive teams of e.g. the Archive of New Acts in Warsaw: in the team for the National Public Prosecutor's Office of the Polish Republic in Warsaw (1919-1939); in the State Archive in Poznań, in the team for the National Public Prosecutor's Office of the Polish Republic – Poznań Brach (1919-1939).

grouped adequately due to their subject matter in reports of the President of the Office [Tkaczuk 2006, 729]. Cases involving the Ministry of Justice were one of such reporting categories. The agenda of activities undertaken by the National Public Prosecutor's Office in matters that were the competence of the Ministry of Justice was not too extensive. It involved primarily legal representation, though it also issued opinions on binding law and legislative drafts and other legal acts that were to regulate the matter of broadly understood Ministry of Justice, also in the administrative and economic realm.

#### 1. LEGAL REPRESENTATION CARRIED OUT BY THE NATIONAL PUBLIC PROSECUTOR'S OFFICE IN CASES INVOLVING THE MINISTRY OF JUSTICE

Legal representation performed by the National Public Prosecutor's Office focused on civil law matters examined in litigious and enforcement proceedings. The State Treasury was sued most often due to damage caused by violation of duty by officials of the Ministry of Justice or faulty application of the institution of criminal law by state authorities.

The activity of court enforcement officers was the most frequent source of cases for compensation, in particular in the former Prussian Partition. The Office, defending the State Treasury, brought in its prime argument that court enforcement officers were not part of the group of state officials for whose activity the State was liable. However, the Office failed to convince the Supreme Court to its line of defense. In 1931 the Supreme Court ruled that court enforcement officers in the former Prussian Partition under the 1922 Act on state civil service<sup>7</sup> and so-called Provisions Law of 1923<sup>8</sup> were to be regarded as permanent officials for whose activity the State Treasury was liable according to the regulation of the Prussian Law on officials of 1 August 1909 and the Law on liability of the state of 22 May 1910.<sup>9</sup> The case is similar with recognition in the decisions of the Supreme Court of liability of the State Treasury for actions of court enforcement officers in the former Russian Partition.<sup>10</sup> The Code of Civil Procedure (CCP) dispelled all doubts as to the liability of the State Treasury for actions of court enforcement officers. Article 521(1) and (2) CCP expressly provided for several liability of

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<sup>7</sup> Act of 17 February 1922 on the State Civil Service, Journal of Laws No. 21, item 164.

<sup>8</sup> Act of 11 December 1923 on old-age pension provisions of state officials and professional soldiers, Journal of Laws No. 6, item 46.

<sup>9</sup> Judgement of the Supreme Court of 16 October 1931, ref. no. III. 2/C.175/ 31 (Report of the President of the National Public Prosecutor's Office of the Republic of Poland for 1931) [hereinafter: SPPG and the relevant year], p. 120.

<sup>10</sup> SPPG – 1931, p. 120.

the State Treasury for damage caused by negligence or malice of court enforcement officers.<sup>11</sup>

In the territory of the former Austrian Partition, branches of the National Public Prosecutor's Office in Lviv and Cracow were involved in protection of the State Treasury in so-called trustee cases, that is in cases launched pursuant to the Austrian Law of 12 July 1872 on liability of the state for damage caused by faulty operation of bodies of the justice department.<sup>12</sup> In 1935, in relation to procedural action of the Lviv branch of the National Public Prosecutor's Office, the Supreme Court issued a judgment that had significant importance for the interpretation of the 1872 law. According to the Supreme Court, the condition for claims against the State Treasury was to exhaust legal means that may prevent the damage. The Supreme Court held that the ruling court should also examine the possibility of repairing the damage from the property of third persons who may be liable under a separate rule, different than the one following from the 1872 law.<sup>13</sup> In a 1937 case concerning financial liability of a judge and the State Treasury for allowing a carer's allocation of funds belonging to a minor contrary to Article 205 of the Austrian Civil Code, the Lviv branch of the National Public Prosecutor's Office held that the State Treasury's liability was subsidiary and encumbered it only when it was impossible to obtain compensation from the offender. The Supreme Court took into account the Office's line of defence in the judgement issued in this case.<sup>14</sup>

Compensation suits for unfounded confiscation ruled in criminal cases or in cases of wrongful conviction or arrest as a rule closed in favour of the State Treasury. This resulted from the fact that compensation claims were brought on the basis on rulings of the criminal court that recognized the disputed ruling as faulty and, as a consequence, not causing effects in criminal law. The defense of the State Treasury taken by the Office in these cases boiled down to questioning the validity of the amount requested.

The consequence of claims brought against the State Treasury included resource claims directed by the National Public Prosecutor's Office against judges and other officials of the judiciary against their official activity that caused damage. These cases were legally complicated and very difficult to run because they needed to take into account various by-laws, internal documents of court authorities and local regulations.<sup>15</sup> In 1937, the Main Office of the National Public Prosecutor's Office examined the question of liability

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<sup>11</sup> Journal of Laws No. 112 item 934.

<sup>12</sup> SPPG – 1931, p. 120.

<sup>13</sup> Judgement of the Supreme Court of 30 December 1935, ref. no. C.III. 1852/35, SPPG – 1936, p. 108.

<sup>14</sup> Judgement of the Supreme Court of 15 January 1937, ref. no. C.II. 2090/36, SPPG – 1937, p. 116.

<sup>15</sup> SPPG – 1935, p. 95; SPPG – 1936, p. 107.

of a judge for drawing a draft division of the enforced sum that exposed the State Treasury to losses. The Office ultimately held that the only way to repair the damage was through a lawsuit against the judges who caused damage to public property, also in instance proceedings, by their negligence.<sup>16</sup>

Such disputes usually ended in favour of the State Treasury.<sup>17</sup> In the group of compensation cases against court secretaries and treasurers for misappropriation of funds and against their superiors for failing to exercise due supervision, the Office received favourable rulings when it came to the former wrongdoers, while in the case of the supervisors, the suits usually closed by dismissing the State Treasury's claims. Courts often recognized no fault of judges, justifying this by courts' being permanently overloaded with work.<sup>18</sup> In another similar case, the courts of two instances in Lviv dismissed claims brought in by the Office holding that the sued judge did not have knowledge about abuses and that a judge's cooperation with court secretaries had to be based on division of labour and trust. Courts mostly adopted the same rulings in majority of analogical cases.<sup>19</sup>

A permanent group of activities of this agenda included cases of enforcement of fines and inquiry deposits (financial guarantees) and opposing proceedings emerging from these activities for excluding property from enforcement. The number of such cases increased significantly in 1933 as a result of entry into force of new legislation that regulated civil proceedings. The Office started receiving orders from court's prosecutor's offices or courts themselves for executing the State Treasury's receivables through enforcement against real estate, based on Article VII of Provisions introducing the law on court enforcement proceedings.<sup>20</sup> In such cases, the National Public Prosecutor's Office advised court authorities concerned, given the usually small amounts claimed and difficulties and costs of execution against real estate, that they rather implement or reopen enforcement against movable property, including carrying out of proceedings to reveal the debtor's assets. Alternatively, that they only request that the Office enter a security mortgage or carry out court actions intended to reveal the debtor's assets.<sup>21</sup>

In 1937, on request of the National Public Prosecutor's Office, the Minister of Justice issued a circular that recommended that courts and prosecutors thoroughly examine the purpose of enforcement against the debtor's immovable property and that they not implement enforcement against real

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<sup>16</sup> SPPG – 1937, p. 117.

<sup>17</sup> SPPG – 1935, p. 95.

<sup>18</sup> SPPG – 1937, p. 117.

<sup>19</sup> SPPG – 1938, p. 126.

<sup>20</sup> Decree of the President of the Republic of Poland of 27 October 1932, the Provisions introducing the law on court enforcement proceedings, Journal of Laws No. 93, item 804.

<sup>21</sup> SPPG – 1933, pp. 139-40.

estate to obtain a due amount that does not exceed PLZ 100.<sup>22</sup> The circular caused a noticeable drop in enforcement actions in the Office.<sup>23</sup> This decrease of enforcement actions, mostly of requests for entry of a security mortgage, was also down to the entry into force of the Decree of the President of 21 November 1938 on improving court proceedings.<sup>24</sup> The Decree amended the wording of Article XVII of the provisions introducing the law on enforcement proceedings by making it impossible to obtain a security mortgage on State Treasury receivables with the value less than PLZ 200. The Office held such solutions harmful to the interest of the Treasury. Most claims executed under Article VII involved amounts less than PLZ 200 and for this reason, in the Office's opinion, the Treasury was denied the possibility of securing receivables resulting from financial penalties and fines imposed by courts or court fees in criminal and civil cases.<sup>25</sup> Apart from enforcement proceedings resulting from Article VII of provisions introducing the law on court enforcement proceedings, upon an order of courts, the Office also performed enforcement of auction deposits forfeited pursuant to Article 692(2) CCP and requested that fines be imposed against debtors who refuse to submit declarations stipulated in Article 636 CCP.<sup>26</sup>

The court's case list also featured cases associated with economic and administrative actions of the authorities of the Ministry of Justice. They included disputes over leasing, construction, maintaining and management of court real estate and prisons. Administration of prisons provided many cases for payment for deliveries of foodstuffs to prisons or those resulting from Prisons' Labour Departments.

## 2. OPINIONS OF THE NATIONAL PUBLIC PROSECUTOR'S OFFICE IN CASES INVOLVING THE MINISTRY OF JUSTICE

The opinion-giving activity of the National Public Prosecutor's Office in cases relating to the Ministry of Justice included consultation activities for *de lege lata* and *de lege ferenda* court law. This case list, however, did not include consultations pertaining to fundamental legislative acts of the court law, such as the code of civil procedure or the code of criminal procedure,

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<sup>22</sup> Circular of the Minister of Justice of 6 August 1937 on examining the rightness of enforcement no. 1848. II. A./37, Official Gazette of the Minister of Justice 1937.

<sup>23</sup> SPPG - 1937, p. 114.

<sup>24</sup> Decree of the President of the Republic of Poland of 21 November 1938 on improving court proceedings, Journal of Laws No. 89, item 609.

<sup>25</sup> SPPG - 1938, p. 129.

<sup>26</sup> SPPG - 1937, p. 115; Notice of the Minister of Justice of 1 December 1932 on announcing a consolidated text of the Code of Civil Procedure, Journal of Laws No. 112, item 934.

because such activities were carried out by the Office under the list of general cases [Tkaczuk 2006, 729; Idem 2011, 59].

When it comes to the Ministry of Justice-related case list, the Office issued opinions on, i.e. legislative drafts, such as the 1926 amendment to the Russian civil act on suspending the course of limitations during the war or the 1926 Regulation on entitlements for witnesses. In 1927 the Main Office of the National Public Prosecutor's Office issued an opinion on amending numerous articles (such as Article 91, 94 or 300) of the Russian act on civil proceedings and Articles 69 and 72 of the Russian act on criminal proceedings.<sup>27</sup> The Main Office also issued a number of opinions on insufficient specification of legal effects of court supervision in the 1917 Decree of the General Government of Warsaw.<sup>28</sup> The Kraków Branch of the National Public Prosecutor's Office, as a result of a competence conflict between a court and a treasury administration authority, issued an opinion on the courts' right to defer payment of fines imposed by it pursuant to Article 98 of the Act on industrial tax.<sup>29</sup> However, the greatest quota of activities of the Office included opinions on provisions on enforcement of penalties, fines and court fees. The opinion issued by the Main Office in 1938 deserves a special mention. The Office held that in ten event of enforcement of the State Treasury's claims laid down in Article VII of provisions introducing court enforcement proceedings by way of receivership of real estate, only the National Public Prosecutor's Office was authorised to represent the interest of the Treasury, even though this type of enforcement was not expressly named in Article VII. The Office justified its stance by saying that pursuant to Article VII enforcement of receivables by courts was stipulated to proceed only through issuing direct instructions to court enforcement officers. Therefore, where such enforcement was the responsibility of a court, not a court enforcement officer, the rule laid down in Article VII did not apply and a general rule was in effect, according to which representation of interests of the State Treasury in proceedings before courts rested with the National Public Prosecutor's Office.<sup>30</sup>

The Office traditionally issued opinions or drafted general specimen contracts used in the administration of the Ministry of Justice, such as contracts for deliveries to prisons, contracts of lease or construction works contracts.

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<sup>27</sup> SPPG – 1928, p. 114.

<sup>28</sup> SPPG – 1926, p. 80.

<sup>29</sup> Ibid.

<sup>30</sup> SPPG – 1938, pp. 129-30.

## CONCLUSION

The presented inter-war legal practice of the National Public Prosecutor's Office of the Republic of Poland in cases concerning the Ministry of Justice allows the following conclusions:

- 1) the National Public Prosecutor's Office executed the case list employing all kinds of official activities that were its competence resulting from the legislation in force. In practice, its case list included predominantly legal representation in litigation and enforcement cases. Opinion giving was another element of its activity in the sphere of legal assistance given to the State Treasury in cases pertaining to the Ministry of Justice. However, a lion's share of legal opinions concerning legislation that regulated court proceedings were issued as part of the Office's general case list;
- 2) legal assistance in the form of the National Public Prosecutor's Office's legal representation in cases pertaining to the Ministry of Justice contributed to protection of material interest of the state through ordering rules of the State Treasury's liability for damage caused by public officials who acted on behalf of the justice system;
- 3) given the importance of the justice system for the reborn Polish state, the activity of the National Public Prosecutor's Office who provided legal assistance to the authorities of the judiciary and the management of the Ministry of Justice deserves much credit as it contributed to reinforcement of the regained independence.

*Translated by Agnieszka Kotula-Empringham*

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