

Abstract of the doctoral dissertation

"Protection of the interests of the State Treasury in the real estate transactions of the non-state real estate – a model approach"

The submitted doctoral dissertation concerns issues related to the protection of the interests of the State Treasury in the real estate transactions of the non-state real estate.

The aim of the research was, firstly, to organize and analyse selected legal titles, constituting the basis for the protection of the interests of the State Treasury in the transactions that are non-state real estate; secondly, defining the conditions for the application of legal institutions designed to protect the interests of the State Treasury. Another objective of the analysis was to identify current trends and existing solutions related to the protection of the interests of the State Treasury in the trade in real estate transactions of the non-state real estate. As a consequence, the research was conducted to propose an optimal model for the protection of the interests of the State Treasury in the trade in these properties.

The main thesis of the thesis assumed that the necessity to protect specific goods may justify the introduction of legal regulations ensuring extended protection of the interests of the State Treasury. However, the current regulations governing the protection of the interests of the State Treasury in the real estate transactions of the non-state real estate interfere excessively with the civil law trade in real estate and violate the civil law principle of equality of entities before the law.

The doctoral dissertation consists of five chapters, each of which ends with concluding remarks.

Chapter I is devoted to issues related to the analysis of the notion of the interest of the State Treasury. To this end, particular attention has been paid to the features defining the legal interest and the resulting public interest, which includes the concept of the interest of the State Treasury. The systemic position of the State Treasury in real estate transactions as an equal entity, whose position is based on balancing the sphere of *imperium* and *dominium*, is discussed. An analysis of the constitutional principle of proportionality in the restriction of the right to property has been carried out, which prevents the instrumentalization of the notion of the

interest of the State Treasury and sets the limit of permissible interference with the constitutional right to property. The considerations adopted in this chapter have been supplemented by the definition of real estate transactions; model concept and non-public property immovable property.

The next chapter dealt with aspects of foreign law related to the institution of the right of pre-emption of real estate. The analysis carried out in Chapter II was intended to indicate the differences in the regulations concerning this institution and to draw attention to the specificity of the solutions adopted in the legislation of selected European countries. To this end, legal systems have been analysed Germany, France and Italy. In addition, the existing solutions in foreign legal systems were evaluated in terms of the possibility of reintroducing some legal solutions tested in foreign law into the Polish legal system.

Chapter III concerned the protection of interests of the State Treasury in historical terms. The extent to which historical conditions determined the shape of the current legal regulations was assessed. The considerations made in this chapter have focused on selected legal institutions ensuring the protection of the interests of the State Treasury in real estate transactions. It was also pointed out how the functions of individual legal institutions were modified depending on political, social and economic conditions, which was of fundamental importance when distinguishing particular models of protection of the interests of the State Treasury.

Chapter IV systematizes the regulations concerning the subject of protection of the interests of the State Treasury in real estate transactions. The material scope of the protection of the State Treasury and the legal tools for the protection of the interests of the State Treasury in relation to particular categories of real estate are indicated. The research covered the relations between the subject of protection and the values behind its exclusion in terms of their legitimacy and impact on the interests of the State Treasury in the trade in real estate not constituting public property. The considerations made in this case were complemented by an analysis of the *ratio legis* of legal acts which are the source of legal institutions serving the protection of the interests of the State Treasury.

The last chapter discusses issues concerning the subjective dimension of the protection of the interests of the State Treasury. The principles of representation of the State Treasury in real estate transactions were analysed. The dispersed system of empowering entities acting for the State Treasury was exposed. The considerations adopted in the above chapter were complemented by an analysis of the bills with their justification, regulating the subjective aspect of the protection of the interests of the State Treasury. The regulations concerning the

representation of the State Treasury in real estate transactions were also assessed from the perspective of indicating the principles of representation, ensuring the greatest subjective independence in the exercise of the rights vested in the State Treasury. The work ends with remarks summarizing individual arguments along with a summary of postulates *de lege ferenda*.

In the dissertation was mainly based on dogmatic-legal, historical-legal and comparative law methods.

The use of the dogmatic and legal research method was used to interpret the applicable regulations as well as to organize and analyze the views of the doctrine, while supplementing the research with current jurisprudence devoted to the protection of the interests of the State Treasury in real estate transactions. The deliberations were mainly based on the provisions of special statutes containing the legal institutions analysed in this dissertation.

The dogmatic-legal method was complemented by the historical-legal method consisting in the analysis of selected institutions serving to secure the interests of the State Treasury in real estate trading from a historical perspective. The historical approach to the institutions used to protect the interests of the State Treasury was used to assess the solutions occurring in the past and the changes in the shape of institutions aimed at protecting these interests, taking into account the achievements of science and jurisprudence in the period from the interwar period to the present. The aim of the historical research was to show the functions of individual legal institutions and the significance of the concept of the interest of the State Treasury in the context of non-legal conditions. The historical and legal method was also used to distinguish models for the protection of the interests of the State Treasury in real estate transactions.

The study also uses the comparative law consisting in the analysis of the institution of the statutory right of pre-emption in selected European countries, as the basic institution serving to secure the interests of the state. The aim of the comparative legal analysis was to point out the similarities and to highlight the differences in the regulations concerning the protection of state interests in real estate transactions, as well as to draw attention to the specificity of solutions adopted in the legislation of selected European countries.

The analysis carried out in the paper allowed to formulate the conclusion that the scope of the notion of the interest of the State Treasury is narrower than the notion of the public interest. In legal regulations, the interest of the State Treasury is usually understood in the economic dimension. It was stated that the position of the State Treasury in civil law transactions, despite the fact that it is based on the formal principle of equality of the parties, is

stronger than that of the other participants. Regardless of the historical period, the interests of the State Treasury in real estate transactions were strongly protected. The historical and legal perspective of the protection of the interests of the State Treasury in real estate transactions confirmed the significant impact of the economic, political and social situation of the country on the shape of the model of protection of the interests of the State Treasury. The existing models of protection of the interests of the State Treasury from the interwar period to the present day are listed.

In the doctoral dissertation, it was noted that the representation of the State Treasury in real estate transactions is dispersed and is based on the functioning of organizational units without legal personality, state legal persons, executive agencies and public administration bodies. It was also shown that the representation of the State Treasury based on the structure of a state legal entity provides the widest protection of the interests of the State Treasury. It was noted that *de lege lata* the legislator has given special protection to the trade in agricultural real estate, which results from historical conditions and their great importance for ensuring the country's food security. It was found that the restrictions on trade also apply to real estate, which includes the country's natural resources. The comparative legal analysis showed that the Polish model of protection of the interests of the State Treasury in real estate transactions not constituting public property significantly limits real estate transactions against the background of legal regulations of selected European countries.

As a consequence, the main thesis of the thesis was demonstrated that the currently applicable regulations regulating the protection of the interests of the State Treasury in the trade in real estate not constituting public property interfere excessively with the civil law trade in real estate and violate the civil law principle of equality of entities before the law.