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Real Securities for Credit on Movable Property in the Second Polish Republic in Light of the Views of Professor Jan Gwiazdomorski*

Zabezpieczenia rzeczowe kredytu na mieniu ruchomym w II Rzeczypospolitej ze szczególnym uwzględnieniem poglądów Profesora Jana Gwiazdomorskiego

ABSTRACT

This article addresses the legal instruments for securing claims on movable assets in the Second Polish Republic, presented against the background of Professor Jan Gwiazdomorski's scholarship. It traces the origins of the demand for the development of legal forms of security over movable property, aimed at strengthening entrepreneurs' credit capacity and permitting them to utilise their encumbered assets. It explores both the notion and the list of security rights, such as transfer of ownership for secu-

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rity purposes, retention of title, and pledge rights, while assessing the prerequisites and admissibility of their establishment within the framework of the legislations of the former partitioning powers. The article also considers the introduction of modern non-possessory registered pledges on timber, agricultural products, motor vehicles, and machinery and equipment. Finally, it points to the influence of Professor Gwiazdomorski's legal thought on the codification projects in the field of property law.

Keywords: real securities; movable property; Jan Gwiazdomorski

INTRODUCTION

Professor Jan Gwiazdomorski noted that in poorer societies, among which he also counted Poland, the central question was the broadening of legal forms and instruments of credit security, for only in this way could access to capital be effectively widened in economic and legal terms.[1] This problem presented itself with striking intensity in the early 20th century, both in Western Europe and in Poland. The Republic of Poland regained its independence as a state in 1918, in the aftermath of World War I, but was then compelled to embark upon and complete a process of institutional, legal, and economic transformation and unification, since, in terms of the operative legal systems, it constituted a mosaic of the five distinct legal regimes of the partitioning powers.[2] At the outset, credit availability for enter-

[1] J. Gwiazdomorski, *Nowoczesne sposoby zabezpieczenia kredytu – własność jako prawo zabezpieczające. Wykład wygłoszony dn. 14 października 1931 r. w cyklu powszechnych wykładów Wyższego Studium Handlowego w Krakowie pod tytułem „Wskazania dotyczące poprawy współczesnej sytuacji gospodarczej". Wykład 2*, Kraków 1932, pp. 3–4.

[2] This concerned the applicability of such normative acts as: the German Civil Code (Bürgerliches Gesetzbuch, BGB) of 1896 together with the Reich Act on Land Registers of 24 March 1897 (RGBL I, no. 15, p. 139) – in the German partition; the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB) of 1811 along with the Act on Land Register of 25 July 1871 (RGB 1871, no. 95) – in the Austrian partition; the Napoleonic Code of 1804 (NC) together with the mortgage statutes of 1818 and 1825 (the former Congress Kingdom), as well as the Civil Code of the Kingdom of Poland of 1825 and the Marriage Act of 1836 – the former Congress Kingdom; the Digest of Laws of the Russian Empire of 1832 (Svod Zakonov Rossìjskoj Imperìi) – in the Russian partition; and, temporarily, the Civil Code of the Kingdom of Hungary, which in 1922 was replaced by Austrian law in the territories of Spiš and Orava. See J. Ciągwa, *Stan prawny na Spiszu i Orawie w latach międzywojennych*, "Studia Iuridica Silesiana" 1986, no. 11, pp. 120–149; idem, *Recepcja prawa węgierskiego na Spiszu i Orawie po roku 1920*, "Studia Historyczne" 1996, no. 39, p. 199 ff. As a result, it became necessary, among other things, to introduce conflict-of-law rules capable of addressing the inter-partition disputes over the applicability of the different partition legislations, by designating which of the five legal regimes should govern in a particular matter. See J. Widło, *Prawo prywatne międzynarodowe i międzydzielnicowe*, [in:] *Synteza prawa polskiego 1918–1939*, eds. T. Guz, J. Głuchowski, M.R. Pałubska, Warszawa 2013, p. 601; L. Górnicki, *Prawa rzeczowe w II RP*, [in:] *Synteza prawa polskiego…*, pp. 301–302.

prises was safeguarded through the mechanism of state guarantees.[3] However, the rebuilding of a modern economy demanded access to monetary capital – inevitably derived from credit or loans – but state-backed reinsurance proved both inefficient and uneconomical. This gave rise to the imperative of implementing modern legal instruments for securing claims by way of real securities over movable property.

The purpose of this article is to present selected real securities for credit during the interwar period, as shaped by the legislation of the former partitioners, together with their concept and the admissibility of their establishment on movable property, their definition, function, and classification as rights of pledge, in the light of the views of Professor Jan Gwiazdomorski. The article also examines the introduction of modern registered pledges on selected categories of movable property. It should be noted that the function of securing credit could also be performed by the right of ownership. What raised doubts, however, was the broader understanding of rights of pledge and, in particular, the admissibility of employing certain forms of security, such as the transfer of ownership for security purposes, in light of the legal systems of the former partitioning powers.[4]

SELECTED METHODS OF ENSURING REAL SECURITY FOR CREDIT IN THE VIEW OF PROFESSOR JAN GWIAZDOMORSKI

1. Transfer of ownership for security purposes

The right of ownership could also serve as a means of securing credit obligations through the mechanism of transfer of ownership for security purposes. According to Professor Gwiazdomorski's definition, this institution entails that the debtor under a credit agreement (being secured), upon the granting of credit, conveys to the creditor, by way of security for his claims, certain items of movable property into ownership, while the parties, within the security agreement, simultaneously determine what will happen to the secured asset both in the case of repayment of

[3] This approach was implemented in a number of countries, including Great Britain, Germany, and, ultimately, Poland. According to data from 31 December 1926, the amounts of state guarantees were as follows: 100,000,000 Polish zlotys in gold, 225,000,000 Polish zlotys in paper currency, 104,809 Dutch guilders, 500,000 Swiss francs, 16,372,132 U.S. dollars, 2,840,386.97 pounds sterling, 3,000,000 Czechoslovak crowns, 500,000 Danish crowns, 1,700,000 gold rubles, and 50,000 Turkish pounds. See "Monitor" 1927, no. 16; A. Peretz, *O zastawie rejestrowym na towarze*, "Przegląd Prawa Handlowego" 1927, no. 4, p. 165.

[4] L. Górnicki, *Koncepcja praw zastawniczych a instytucja kredytu realnego w projektach kodyfikacyjnych w dwudziestoleciu międzywojennym w Polsce*, "Acta Universitatis Wratislaviensis. Prawo" 2005, no. 294, pp. 173–197; idem, *Prawa rzeczowe…*, p. 343. As to the pledge capacity of enterprises, see J. Weber, *Przedsiębiorstwo jako narzędzie kredytu*, "Przegląd Prawa Handlowego" 1934, no. 6, p. 210.

the credit and, separately, in the event that the creditor fails to obtain satisfaction within the prescribed time. As the scholar further notes, the parties typically agree that, upon repayment of the credit, the creditor will retransfer ownership of the transferred items back to the debtor; whereas, in the event of non-payment within the prescribed time, the creditor may sell the items at market price, satisfy his claim from the purchase price, and return any surplus to the debtor.[5]

Gwiazdomorski emphasised the securing function of ownership, the transfer of which was not intended to effect a definitive for the benefit of the person entitled, but rather meant a temporary holding of movable property by the creditor for the purpose of ensuring repayment of his receivable. When exercising the mechanism of transfer of ownership for security purposes, the creditor will either dispose of the collateral outside of enforcement proceedings and satisfy his claim from the market price, or, in the event that the secured obligation is repaid, will be obliged to reconvey ownership of the collateral to the debtor. The Professor further limited, in his definition, the scope of permissible transfers of ownership for security purposes solely to movable property.

2. Retention of title

According to Professor Gwiazdomorski, retention of title consists in the seller, "when transferring a thing (goods) to the buyer, reserves for himself that ownership of the thing will not pass to the buyer so long as the latter has not fully discharged his reciprocal performance towards the seller".[6]

As the author observed, in his view it was doubtful whether retention of title or, alternatively, transfer of ownership for security purposes was admissible under the legal systems in force in Poland in 1932: namely, the Austrian, German, and French regimes.[7] Gwiazdomorski noted that the Vienna Supreme Court had initially taken a favourable view of transfer of ownership for security purposes in Austrian law (rulings from 1913 and especially of 8 January 1914), accepting both its legitimacy and its full legal effect. Thereafter, in its ruling of 21 September 1915 and in subsequent decisions, the Court took a directly contrary view, reasoning that the Austrian Civil Code made no provision for the institution of transfer of ownership for security purposes.[8] Gwiazdomorski, however, considered this mechanism to be admissible under Austrian law. He stressed that transfer of ownership for security purposes and pledge entailed different legal consequences, and that the owner – including one who had acquired a movable item through such transfer – retained

[5] J. Gwiazdomorski, *op. cit.*, p. 4.
[6] *Ibidem*.
[7] *Ibidem*.
[8] *Ibidem*, pp. 9–10.

the right to dispose of and administer the property, even to the extent of placing it under the control – including possession or lease – of a third party, for instance the debtor. As to whether transfer of ownership for security purposes was admissible under the Napoleonic Code, Gwiazdomorski voiced the opinion that it was inadmissible, being tainted by the objection of simulation (sham), since in essence it disguised a pledge. By contrast, in the territories of the former German partition, transfer of ownership for security purposes was recognised as admissible.[9] All of the partition-based legal regimes in force in the Second Polish Republic accepted the validity of retention of title as a means of security.[10]

PLEDGE RIGHTS: REGISTERED PLEDGES OVER MOVABLE PROPERTY AS AN ORIGINAL LEGAL CONTRIBUTION OF THE SECOND POLISH REPUBLIC

The contribution of Professors Jan Gwiazdomorski and Fryderyk Zoll to Polish civil law scholarship was their attempt to capture the very essence of pledge rights. Zoll and Gwiazdomorski defined such rights as "the power conferred upon the pledgee (creditor) to satisfy a specified claim from another's proprietary right (most commonly belonging to the debtor) in the event of the debtor's non-performance, such satisfaction being accorded priority by virtue of the existence of the pledge right".[11] The scholars pointed out that pledge rights are accessory in nature, subsidiary to the secured claim, and that they establish liability *in rem* in contrast to personal liability.[12] Enforcement of these rights generally takes place through enforcement proceedings, preceded by a judicial decision authorising, or at least noting the absence of objection to, the act of satisfaction on the part of the debtor whose property is encumbered.[13] This definition was subsequently incorporated into codification work to delineate the content of the mortgage (Article 190 DRP[14]) and

[9] *Ibidem*.

[10] *Ibidem*.

[11] F. Zoll, *Prawo cywilne opracowane głównie na podstawie przepisów obowiązujących w Małopolsce*, vol. 1: *Część ogólna*, in cooperation with J. Gwiazdomorski, L. Oberlender, T. Sołtysik, Poznań 1931, p. 122. See also idem, *Prawo cywilne. Prawa zastawnicze. Według źródeł prawa obowiązującego w Małopolsce i na Ziemi Cieszyńskiej*, with the contribution of S. Kosiński, T. Sołtysik, Kraków 1937, p. 4.

[12] F. Zoll, *Prawo cywilne w zarysie. Prawo rzeczowe*, with the contribution of A. Szpunar, vol. 2, no. 1, Kraków 1947, pp. 56–57.

[13] An exception arises where the *in rem* debtor is also the personal debtor under the secured principal claim, in which event he or she is under a duty to render performance.

[14] Decree of 24 October 1946 amending the Act of 15 June 1939 on registered pledges on machinery and equipment (Journal of Laws 1946, no. 64, item 349). Pursuant to Article 190 § 1 DRP, real property encumbered for the purpose of securing a designated claim, the consequence being that,

of the right of pledge (Article 250 DRP).[15] These provisions provided the foundation for the regulations of the 1964 Civil Code, which remains binding at present.

Interestingly, the interwar Polish legislation, seeking to address the demands of economic circulation, developed innovative and original solutions representing an authentic achievement of domestic legal scholarship with respect to registered pledges over diverse classes of assets, such as machinery, motor vehicles, and even agricultural produce.[16] The Polish legislator boldly admitted non-possessory securities, which did not require delivery of the pledged asset to the creditor, alongside possessory pledges provided for in the respective legal regimes of the former partitioners. German legal doctrine had traditionally maintained that, as a rule, the delivery of the thing fulfilled the requirement of publicity for a pledge and secured the creditor's interests.[17] A possessory pledge, however, prevented the debtor from making use of the collateral in his economic activity. The problem thus emerged of how to resolve this conflict of interests: how to ensure that the creditor obtained effective security over the debtor's economic property, while at the same time enabling the debtor to utilise the pledged property to generate income for the repayment of the credit. The solution was found in the establishment of several forms of non-possessory registered pledges, to be outlined below: (1) agricultural registered pledge; (2) registered pledge on timber; (3) registered pledge on motor vehicles; and (4) registered pledge on machinery and equipment.

1. Agricultural registered pledge

This pledge was governed by the Regulation of the President of the Republic of Poland of 22 March 1928 on the agricultural registered pledge.[18] The agricultural

in enforcement against the property, the entitled creditor has precedence over the personal creditors of the current owner (mortgage).

[15] Pursuant to Article 190 § 1 DRP, the pledge confers upon the entitled creditor (the pledgee) the right to satisfy a designated claim from a movable thing, enjoying precedence over the personal creditors of the current owner (pledgor).

[16] Cf. F. Zoll, *Prawo cywilne. Prawa zastawnicze…*, p. 29 ff.; J. Stworzewicz, *Instytucja rejestrowych praw zastawu w ustawodawstwie polskim*, "Przegląd Notarialny" 1932, no. 2; F. Zoll, *Prawo cywilne w zarysie. Prawo rzeczowe. Prawa zastawnicze*, with the contribution of A. Szpunar, vol. 2, no. 2, Kraków 1947, p. 86.

[17] Heinz Lehmann, in a 1937 memorandum of the Academy of German Law, pointed to eight alternative methods of achieving publicity other than the delivery of things: (1) affixing a bailiff's seal to the encumbered item; (2) execution of the security agreement in written form; (3) judicial or notarial drafting of the document; (4) public authentication; (5) a bailiff's report; (6) registration in a security register; (7) entry in a public debt ledger; and (8) entry in a pledge register. After W. Hromadka, *Sicherungsübereignung und Publizität*, "Juristische Schulung. Zeitschrift für Studium und Ausbildung" 1980, no. 2, p. 91.

[18] Journal of Laws 1928, no. 38, item 360, hereinafter: RAR.

pledge was not separately codified as an institution. In substance, it corresponded to the ordinary pledge,[19] albeit with modifications resulting from the said regulation. Its most important characteristics need to be explained. It was limited only to specific categories of assets enumerated in Article 4 RAR: exclusively products of agriculture and of the agricultural industry owned by the pledgor, provided that under applicable law they did not qualify as immovable property (its fixtures and appurtenances), and that they were located on immovable property either owned, leased, or otherwise used by the pledgor[20] (a restriction of material scope).

The agricultural pledge was marked by restrictions in its personal scope. Eligible pledgees were restricted to: (1) state credit institutions; (2) municipal credit institutions; (3) cooperative credit institutions; and (4) credit institutions designated by the Minister of the Treasury (Article 3 RAR). As for pledgors, these could be only natural or legal persons operating agricultural holdings or agro-industrial enterprises, namely those whose principal activity lay in the processing of their own agricultural production (Article 2 RAR). The establishment of an agricultural registered pledge required the conclusion of a pledge agreement executed either as an official deed or as a private document with signatures duly notarised or judicially certified, which had to contain a detailed description of the pledged asset and the debt secured thereby (Article 5 RAR). Throughout the duration of the pledge, the pledged asset remained in the possession of the pledgor, provided that it was permanently and clearly designated (Article 8 RAR).[21] By operation of law, the pledge extended to the pledgor's claims against the insurer in cases where the asset was covered (Article 20 RAR).

This pledge was subject to entry in a pledge register, upon the application of either the pledgee or the pledgor, before the competent registration court. At first, this was the district court (justice of the peace) having jurisdiction over the location of the agricultural holding or enterprise (Article 7 RAR), and subsequently the municipal court (§ 2 of the Regulation of 23 August 1939 on the agricultural

[19] On agricultural registered pledge, see Z. Fenichel, *Rejestrowy zastaw rolniczy*, "Przegląd Notarialny" 1936, no. 10, p. 237 ff.; R. Longchamps de Bérier, *Prawo rzeczowe*, Lublin 1934, p. 7; F. Zoll, *Prawo cywilne. Prawa zastawnicze…*, p. 29 ff.; idem, *Prawo cywilne w zarysie…*, vol. 2, no. 2, p. 86; M. Allerhand, *Kodeks handlowy. Księga druga. Czynności handlowe. Komentarz*, Lwów 1935 (reprint Bielsko-Biała 1991, p. 1048; J. Gołaczyński, *Zastaw na rzeczach ruchomych*, Warszawa 2002, pp. 65–66.

[20] In this last instance, the pledgor had to secure the landowner's formal consent to the creation of a pledge (the consent being expressed in the form appropriate for a pledge agreement – Article 4 (2) RAR).

[21] Where the pledged asset was hidden or destroyed, the pledgee had the right to demand either reinstatement of the former condition or replacement of the pledged asset with another asset. For this purpose, he or she was authorised to require the pledgor to do so in a registered letter, within a period of 7 days (Articles 18–19 RAR).

pledge register and pledge marks[22]). The effect of entry in the pledge register was a matter of considerable controversy. Pursuant to Article 6 RAR, "in relation to third parties, the agricultural registered pledge attains legal effect by virtue of the entry of the pledge right in the pledge register". The first view, following the literal wording of the provision, held that all pre-war (registered) pledges arose through an agreement between the pledgor and the pledgee, while the entry of the pledge in the register was not constitutive.[23] The entry served only to render the pledge effective *erga omnes*, while a further requirement for such effectiveness was that the pledged asset remained on the premises of the agricultural holding or agro-industrial enterprise. As a general rule, the removal of the pledged item from the holding led to the extinction of the pledgee's rights (Article 16 RAR).

The alternative interpretation held that registration had a constitutive effect and itself gave rise to the pledge.[24] From the analysed regulation, it followed that the registered pledge, in its proper sense as a limited right in rem, was established at the moment of entry in the relevant register, on condition that the collateral was situated within the registered holding or enterprise. The constitutive entry operated to confer *erga omnes* effect upon the pledge and to secure priority over other creditors (both unsecured and those secured but with secondary priority), thereby endowing the pledge with its full content as a limited right *in rem* serving a security function.[25] It might, of course, be argued that the pledge bound the parties *inter partes* from the moment the agreement was concluded. In terms of legal effects, however, this carried no significance and conferred no rights. The right was not effective *erga omnes*, and the pledgee could not rely on the enforcement privileges arising from the pledge (as these occurred only upon registration). Satisfaction would therefore have been based on personal liability, which in any event stemmed from the secured obligation. For this reason, the latter view regarding the effects of registration of the pledge must be endorsed.[26]

[22] Regulation of the Ministers of: the Treasury, Justice, and Agriculture and Agrarian Reform of 23 August 1939 on the agricultural registered pledge and pledge marks (Journal of Laws 1939, no. 81, item 528). The regulation contained detailed provisions on the organization of the pledge register.

[23] J. Gołaczyński, *op. cit.*, p. 73.

[24] Z. Fenichel, *op. cit.*, p. 243.

[25] It was essential to establish a legal framework for this new and modern institution which, in the first place, affirmed that the non-possessory pledge was effective toward third parties; in the second place, that this effect was achieved through registration; and in the third place, that the moment of entry into the register determined the acquisition of such effectiveness, thereby normatively highlighting the specific character of this pledge. See J. Widło, *Zastaw rejestrowy na prawach*, Warszawa 2008, p. 63.

[26] For more arguments, see *ibidem*, p. 64.

2. Registered pledge on timber

This pledge was governed by the Act of 14 March 1932 on the registered pledge on timber.[27] The pledge embodied legal solutions similar to those of the agricultural registered pledge, so that the remarks offered in respect of the latter largely remain relevant.[28] Nonetheless, it is worth emphasising the principal characteristics of this right, particularly those that set it apart from the agricultural arrangement.

The collateral under the registered pledge on timber was strictly confined to timber – felled, either processed or unprocessed – owned by the pledgor, its exemplary list provided in Article 1 RPT.[29] In addition, the timber was required to be situated on a landed property owned by the pledgor.[30] Accordingly, this pledge, too, was marked by its narrowly defined material scope. The RPT further introduced restrictions in its personal scope.[31] Pledgors could only be natural or legal persons operating forestry holdings, or traders entered in the commercial register whose business fell within the timber industry or wholesale timber trade (Article 2 RPT).

The creation of a registered timber pledge required the execution of a pledge agreement either as an official deed or as a private instrument with a signature duly attested by a public notary or court, and with the date of the agreement likewise authenticated.

The pledge contract had to include a description of the pledged asset identified by its type, with a statement of its quantity and location, along with either the value of the claim secured by the pledge or the maximum secured amount, the so-called total deposit (Article 6 RPT). What set this registered pledge apart from others of the interwar period was that the agreement could contain a supplementary clause allowing for the replacement of the pledged timber with other timber identified by quantity and species (variable composition). The agreement might further provide that the pledge right would attach to timber obtained through processing (new assets included in the pledge – the surrogation of the pledged asset). The pledged asset remained with the pledgor, yet it had to be permanently and conspicuously designated,

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[27] Journal of Laws 1932, no. 31, item 317, hereinafter: RPT.

[28] On the registered pledge on timber, see F. Zoll, *Prawo cywilne. Prawa zastawnicze…*, p. 29 ff.; idem, *Prawo cywilne w zarysie…*, vol. 2, no. 2, p. 86, M. Allerhand, *op. cit.*, p. 1048; J. Gołaczyński, *op. cit.*, pp. 65–66. On the accessory nature of this pledge, see J. Mojak, J. Widło, *Sądowy zastaw rejestrowy w systemie praw rzeczowych*, "Rejent" 1999, no. 4, p. 85; J. Widło, *Zastaw…*, p. 65.

[29] The pledge could extent to sawn, cut, or split wood, as well as plywood and veneers, the statutory list of which was non-exhaustive.

[30] By way of exception – similarly to the agricultural pledge – where the pledgor possessed a right other than ownership in relation to the land, it was necessary for them to secure the landowner's formal consent to the establishment of the pledge (in the form provided for in the relevant pledge agreement).

[31] Eligible pledgees of this pledge were restricted to: (1) the State Treasury; (2) state credit institutions; (3) state-run enterprises of registered traders; and (4) credit institutions designated by the Minister of the Treasury (Article 3 RPT).

and the pledgor was under a duty, at the pledgee's request, to permit inspection of the pledged asset.[32] Allowing the replacement of the pledged asset of a registered pledge (specified by type) by way of surrogation constituted a genuine innovation against the background of Polish security law. The pledge was required to be entered in a public pledge register, through which it acquired effectiveness *erga omnes* (Article 7 RPT).

3. Registered pledge on motor vehicles

The institution of the registered pledge on motor vehicles was governed by the Act of 28 April 1938 on registered real rights in motor vehicles.[33] The RMV established two types of security rights concerning motor vehicles in the form of registered real rights: registered retention of title until payment of purchase price and registered pledge (Article 2 RMV).

Pursuant to Article 3 RMV, a motor vehicle could not be encumbered at once with both a registered retention of title and a registered pledge. The discussion hereafter is confined to the registered pledge on motor vehicles.[34] The pledge assets could exclusively be engine-powered mechanical vehicles (today known just as motor vehicles) with a capacity of more than 100 cm³ and not designed for operation on rails (Article 2 RMV). The RMV also contained restrictions concerning the personal scope.[35] The agreement establishing a registered pledge was required to be concluded in writing and to contain at least the following: (1) the designation and domicile of the parties; (2) a description of the pledged asset, in particular the engine number and the chassis serial number; (3) the amount and terms of payment of the secured claim; (4) a provision on disclosure in the relevant register of the pledge right in favour of the seller; and (5) the effective date of the agreement (Article 31 RMV).

By virtue of the creation of a registered pledge on motor vehicles, the pledgee was vested with particular entitlements, namely the right of priority to be satisfied from the motor vehicle ahead of all other creditors, both private and public, save only for the costs of enforcement (Article 7 RMV). The right of priority likewise encompassed claims for compensation against the insurer under motor hull coverage

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[32] Another distinction between the registered pledge on timber and that in agriculture was that, where the pledged item was unlawfully removed from the location designated in the agreement, the pledgee was not entitled to demand reinstatement of the original condition thereof within 7 days.

[33] Journal of Laws 1938, no. 36, item 302, hereinafter: RMV.

[34] On the registered pledge on motor vehicles, see F. Zoll, *Prawo cywilne w zarysie…*, vol. 2, no. 2, p. 87; M. Allerhand, *op. cit.*, p. 1048; J. Mojak, D. Pelak, J.A. Sieklucki, J. Widło, *Umowa o ustanowienie zastawu rejestrowego*, Lublin 1998, p. 28; J. Gołaczyński, *op. cit.*, pp. 65–66; J. Widło, *Zastaw…*, p. 67.

[35] Pursuant to Article 32 RMV, registered pledge rights could be established exclusively for the benefit of: (1) the seller, in respect of the purchase price of a motor vehicle or chassis; (2) the person who built the vehicle body, in respect of the remuneration for work; and (3) the person who paid to the seller of the vehicle or to the vehicle body builder all or part of the amounts owed to them.

(Article 8 (1) RMV). By operation of law, the pledgee was entitled to exercise the rights arising from the insurance contract.

4. Registered pledge on machinery and equipment

The institution of the registered pledge on machinery and equipment was governed by the Act of 15 June 1939 on the registered pledge on machinery and equipment.[36]

Only new and unused machines and equipment acquired for industrial plants or craft businesses could serve as collateral for this pledge.[37] The pledge was also subject to restrictions as to the personal scope.[38] For the establishment of a registered pledge on machinery and equipment, a pledge agreement had to be concluded which, pursuant to Article 25 (1) RME, was to be executed in writing and with notarised signatures of the parties, and contain: (1) the designation and domicile of the parties; (2) the description of the pledged asset(s);[39] (3) the amount of the claim secured by the pledge;[40] and (4) the effective date of the agreement. The legal effect *erga omnes* of the pledge arose upon its registration (Article 22 (1) RME). The RME further laid down particular rules concerning the satisfaction of pledgee's claims.[41] The collateral could remain in the possession of the pledgor or

[36] Journal of Laws 1939, no. 60, item 394, hereinafter: RME.

[37] Cf. F. Zoll, *Prawo cywilne w zarysie…*, vol. 2, no. 2, p. 87. Decree of 24 October 1946 amending the Act of 15 June 1939 on registered pledges on machinery and equipment (Journal of Laws 1946, no. 64, item 349) extended the possibility of creating a registered pledge also to used machines and equipment. The pledgor was also obliged to insure the pledged asset. Cf. T. Stawecki, [in:] T. Stawecki, M. Tomaszewski, F. Zedler, *Ustawa o zastawie rejestrowym i rejestrze zastawów*, Warszawa 1997, p. 181.

[38] Eligible pledgees were restricted to: (1) a registered trader who, as seller, secured the purchase price by means of a pledge; (2) credit institutions which secured, by pledge, a claim arising from a loan agreement for the purchase of new, unused machines and equipment (Article 2 (1) RME).

[39] Sufficient to establish the identity and the acquisition price, together with the exact address of the plant or craft business for which the machine or apparatus was purchased.

[40] As well as the terms of payment and the period for which the pledge right was established, together with particulars and statements that the secured obligation is the claim arising from the payment of the purchase price of a machine or from a loan for the acquisition of equipment.

[41] Where the pledgor defaulted on the payment of at least two instalments of the debt secured by the pledge, the pledgee was entitled to petition the bailiff to take the pledged item from the pledgor's possession and to sell it by way of public auction (Article 26 RME). Petition to the bailiff should be preceded by a written request from the debtor to make payment. The creditor could also purchase the pledged item at auction themselves. Should this be the case, they were able to offset their claim against the purchase price (Article 31 RME). The procedure for auction was governed by Articles 510–514 of the Commercial Code and by the provisions of the Regulation of the Minister of Justice of 1 July 1934 on the procedure for public auctions (Journal of Laws 1934, no. 59, item 510). See also the remarks concerning the pledge on motor vehicles. On commercial pledges, see S. Goldsztein, *Zastaw według polskiego prawa handlowego*, "Przegląd Prawa Handlowego" 1934, no. 5–6, p. 203.

of a third party (Article 4 RME),[42] provided it was distinctly designated (Article 5 RME).

The register of pledges was public (Article 17 RME) and was kept by the municipal court having jurisdiction over the pledgor's location (Article 18 (1) RME).

CONCLUSIONS

To conclude, the distinctive achievement of Polish jurisprudence in the era of the Second Polish Republic lay in the creation of modern devices for securing claims in rem, dispensing with the requirement of transferring the secured asset into the creditor's possession. These legal instruments were unified across the entire territory of Poland, even though the traditional rights in rem continued to be governed by the legal systems inherited after the partitioning powers. With regard to publicity of rights and their effectiveness against third parties, the solution adopted followed Lehmann's German-inspired concept, namely registration of pledges, generally in a public register maintained by courts of law. Conversely, the legislation also established a system of multiple registers, each limited to a particular class of goods (a solution inspired by the Romanesque model).[43] It likewise provided for special mechanisms of satisfaction of claims and for the substitution of collaterals by surrogates, e.g., monetary proceeds obtained from insurance. The security instruments were narrow in their personal scope. In some situations, they accorded the pledgee priority of satisfaction not only over private creditors but also, exceptionally, over claims under public law (as in the case of registered pledges on motor vehicles). They allowed debtors to make flexible use of ownership rights in assets designated for business activity, while at the same time providing effective security for credit institutions in the financing of entrepreneurs. This created an excellent framework for the economic development of reborn Poland. The outbreak of World War II brought this process to an abrupt end.

Professor Jan Gwiazdomorski both elucidated, in an innovative manner, the legal instruments for securing credit contained in the legislations of the former partitioners, and charted avenues of interpretation that made it possible to employ ownership as a means of security. He advanced definitions and classifications of security rights and developed an understanding that permitted, for instance, the recognition of transfer of ownership for security purposes under Austrian law. He proposed a modern take on pledge rights, which enabled their effective application as instruments of security. His legal ideas were employed in the prepa-

[42] The pledgee enjoyed the right to examine the collateral, and any infringement of this entitlement could render the claim immediately enforceable (Article 4 (2) RME).

[43] J. Widło, *Zastaw…*, p. 145.

ration of the draft property law of 1937 and were subsequently incorporated into the Property Law Decree of 1946. They also underpin the 1964 Civil Code, still in force today.

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ABSTRAKT

W artykule przedstawiono prawne sposoby zabezpieczenia wierzytelności na mieniu ruchomym w II Rzeczypospolitej na tle poglądów Profesora Jana Gwiazdomorskiego. Wskazano na genezę potrzeby rozwoju prawnych sposobów zabezpieczenia na mieniu ruchomym, by zwiększyć zdolność kredytową przedsiębiorców i umożliwić im korzystanie z obciążonych aktywów. Omówiono pojęcie i katalog takich praw zabezpieczających jak: przewłaszczenie na zabezpieczenie, zastrzeżenie własności, prawa zastawnicze. Ponadto przeanalizowano przesłanki i dopuszczalność ich ustanawiania w świetle uregulowań praw dzielnicowych. Analizie poddano także wprowadzenie nowoczesnych zastawów rejestrowych, nieposesoryjnych: na drewnie, produktach rolniczych, pojazdach mechanicznych i maszynach. Wskazano też na wpływ myśli Profesora Gwiazdomorskiego na projekty kodyfikacyjne prawa rzeczowego.

Słowa kluczowe: zabezpieczenia rzeczowe; rzeczy ruchome; Jan Gwiazdomorski