Kamil Zaradkiewicz[1]

Future of the Euromortgage concept

Część I: Rozwiązania w wybranych państwach europejskich

DOI: 10.5604/01.3001.0016.3036

Streszczenie:

Od lat 60. ubiegłego stulecia w różnych gremiach trwa dyskusja nad wprowadzeniem w Europie elastycznego prawa zastawniczego na nieruchomości, które mogłoby służyć zabezpieczaniu przede wszystkim kredytów w obrocie transgranicznym. Mimo że obecnie problem ten nie jest bliżej analizowany, z uwagi na szereg istotnych zmian w różnych europejskich prawodawstwach, w tym w prawie polskim, przewidujących nowe rozwiązania w obszarze prawa hipotecznego, warto na nowo rozważyć, czy i które z nich mogą stanowić ewentualny wzór dla przyszłego rzeczowego prawa zabezpieczającego w prawie Unii Europejskiej. Pierwsza część artykułu ukazuje tło historyczne rozwiązań zrywających z romańskim modelem akcesoryjnych praw zastawniczych oraz prezentuje klika wybranych nowoczesnych systemów hipotecznych, w których w istotnym zakresie zerwano z zasadą zawisłości zabezpieczeń rzeczowych na nieruchomościach - przede wszystkim niemieckiego, słoweńskiego, szwajcarskiego, francuskiego, estońskiego i węgierskiego. Praktyka słoweńska może być przy tym przykładem rozwiązań, które się w praktyce nie sprawdziły z uwagi na nadużycia związane z ustanawianiem nieakcesoryjnego prawa zastawniczego dla pokrzywdzenia wierzycieli poszukujących zaspokojenia innych wierzytelności z majątku właściciela obciążonej nieruchomości.

Słowa kluczowe: eurohipoteka, hipoteka, dług gruntowy, zabezpieczenie rzeczowe, akcesoryjność

Future of the Euromortgage concept

Part 1: Solutions in selected European countries

Abstract:

Since the 1960s, discussions abound on introducing in Europe a flexible pledge right on real estate that could be used to secure primarily cross-border loans. Although this issue is not currently undergoing detailed analysis, yet due to a number of significant changes in various European legislations, including in Polish law, that anticipate new solutions in mortgage law, it is worth reconsidering whether and which of these solutions might constitute a possible model

[1] Doktor habilitowany nauk prawnych, adiunkt na Wydziale Prawa i Administracji Uniwersytetu Warszawskiego, sędzia Sądu Najwyższego, ORCID: 0000-0003-3067-3583.

for future security in rem right in European Union law. The first section of the article outlines the historical background of solutions breaking with the Roman model of accessory pledge rights and offers a pageant of selected modern mortgage systems which have considerably departed from the principle of pendency of material security on real estate, primarily the German, Slovenian, Swiss, French, Estonian and Hungarian systems. Slovenian legislation may be taken as an example of solutions that have not proven useful in practice due to abuses related to the establishing of a non-accessory pledge right to the detriment of creditors seeking the satisfaction of other debts from property of the owner of the encumbered real estate.

Keywords: Euromortgage, mortgage, land debt, security in rem, accessoriness

I. Introduction

Despite the basically similar legal tradition derived from Roman law, numerous differences exist today between systems of pledge rights on real estate which are used in various European countries.[2]

Because of this variety and major issues related primarily to the traditional form of accessory mortgage, the second half of the 20th century saw the emergence of an idea to establish a separate, special pledge right on real estate to provide property-based security of cross-border loans. The usefulness of this kind of legal institution was connected to the potential emergence of a single European market for mortgage loans ("home loans without frontiers").[3] This in turn sparked the discussion on developing uniform European property law.

Despite the lively early 21st century discussion on supranational codification of civil law, including property law, so far, the projected introduction of a new security in rem institution did not take place. The euromortgage idea was, particularly in the late 1990s, the object of efforts undertaken within the Association of German Pfandbrief Banks (*Verband Deutscher Pfandbriefbanken*),[4] and also by the Polish Foundation for Mortgage Loans.[5]

It was also analysed whether potential solutions in this respect would be introduced on the European Union level.[6] In the Green Paper of 2005, the European Commission noted that an euromortgage is an attempt to "create an EU-wide instrument for securing loans, that is, for the mortgage collateral, which can be used in a flexible way." The paper mentioned the position of proponents of this idea that "its central aspect – the weakening of the link between the

[2] O. Stöcker, L'«eurohypothèque», pionnier d'un marché intérieur du crédit hypothécaire, Banque & Droit no. 49, septembre-octobre 1996, s. 14.
[3] O. Stöcker, L'«eurohypothèque», pionnier d'un marché…, s. 14.
[4] A. Wudarski, W poszukiwaniu konstrukcji eurohipoteki, Kwartalnik Prawa Prywatnego 2009, z. 1, s. 215; O. Stöcker, R. Stürner (red.), Flexibilität, Sicherheit und Effizienz der Grundpfandrechte in Europa, Band III, 3. erweiterte Auflage, VDP-Schriftenreihe, Vol. 50, Berlin 2012.
[5] Zob. w szczególności: A. Drewicz-Tułodziecka (red.), Basic Guidelines for a Eurohypothec, Outcome of the Eurohypothec workshop November 2004/April 2005, Warszawa 2005.
[6] Komisja Europejska, *Zielona Księga. Kredyt hipoteczny w UE*, KOM(2005) 327 wersja ostateczna.

mortgage collateral (...) and mortgage credit – would facilitate the creation and transfer of mortgages, thereby having a beneficial impact on the mortgage credit market as a whole, in particular on its funding." These problems have not, however, met with wider interest. In the White Paper of 2007,[7] the Commission stated that "until this detailed work has been undertaken and further consultation with stakeholders have been concluded, the Commission considers that it would be premature to decide on whether a Directive would deliver the necessary value added."

In addition, the euromortgage concept formed an essential point of reference during early stages of work of the property law team within the Civil Law Codification Commission headed by S. Rudnicki (with the participation of experts from the Foundation for Mortgage Loans).

In recent years, discussion concerning a European-wide pledge right on real estate has basically died down and no relevant provisions harmonising the legislations of European Union member states concerning property-based security, including those used to secure mortgage loans, have been introduced so far.[8]

The purpose of the article is to assess whether, compared to varied flexible property law solutions existing in certain states, the Polish norms adopted in 2009[9] might serve as an attractive model meeting the assumptions laid out for the so-called euromortgage scheme (German: *Eurohypothek*). This requires comparing the basic solutions existing in selected European countries that deviate from the traditional "fossilised" accessory mortgage model with proposals related to a new institution, almost universally called the "euromortgage," and to use this comparison as a background to show the advantages and disadvantages of the solution adopted by the Polish legislator.

II. The concept of European-wide security on real estate

Reflections on introducing a pan-European pledge right have been undertaken by various groups for more than fifty years. The idea of uniform mortgage regulations goes back as far as the late 1960s. The so-called "Segré report"[10] of 1966[11] was the first document calling attention to the need to harmonise property-based securities within the European Communities (noting the "adoption of a uniform and flexible security in rem such as the German Grundschuldbrief (land charge deed)." In 1969, in turn, the Commission addressed to the Council a

[7] Komisja Europejska, *Biała Księga dotycząca integracji rynków kredytu hipotecznego w UE*, KOM(2007) 807 wersja ostateczna.
[8] Zob. np. A. Wudarski, *W poszukiwaniu konstrukcji eurohipoteki*…, s. 207.
[9] Ustawą z dnia 26 czerwca 2009 r. o zmianie ustawy o księgach wieczystych i hipotece oraz niektórych innych ustaw, Dz. U. Nr 131, poz. 1075.
[10] Stworzenie europejskiego rynku kapitałowego, raport sporządzony przez grupę ekspertów Komisji Europejskiej w Brukseli w listopadzie 1966. Raport ten nazywany jest „Raportem Segré" od nazwiska Przewodniczącego grupy ekspertów, prof. Claudio Segré.
[11] *Der Aufbau eines Europäischen Kapitalmarkts: Bericht einer von der EWG-Kommission eingesetzten Sachverständigengruppe,* 1966*;* zob. A. Wudarski, *W poszukiwaniu konstrukcji eurohipoteki*…, s. 212 i n.

memorandum in which it considered research on uniform pledge law on real estate as worthwhile.[12] Further research on harmonising mortgage law, carried out in the 1970s (the Max Planck Institute report of 1971, the P. Jackson report of 1976), did not lead to any breakthrough or significant conclusions concerning legislative uniformity of European Communities member states.[13] On the other hand, in 1987, the International Union of Latin Notaries put forth proposals[14] to introduce the euromortgage institution as a flexible instrument for securing debts.[15] This concept was supposedly patterned on the Swiss Civil Code solutions concerning debt (mortgage) certificates.

Legal theory, especially at the turn of the 20th and 21st century, has likewise proposed the introduction of the euromortgage institution. However, unlike in the International Union of Latin Notaries proposal, it referred to the German model, in which a solution in the form of so-called land charge had already been known.[16] At any rate, in the intention of proponents of the euromortgage idea the new pledge right was meant primarily to allow changes in the amount of security depending on changes in the amount of debt secured by way of a trust, or potentially to provide multiple securities, both simultaneous and successive (debt conversion) as the so-called indirect and consortial financing. For this purpose, it was proposed to use the German institution, already proven in the practice of legal transactions.

Despite resuming this discussion within European institutions in 2006, so far, the euromortgage concept has not been implemented, and in recent years became virtually extinct. This is most probably because currently it is not possible to extend European law by uniform provisions related to property law institutions which would function in an identical manner in all European Union member states. It does not appear, however, that this idea is entirely dead and gone.

III. Dogmatic assumptions – flexible security

Already in the 19th century, it was noticed that immovables form a major “valuable” in loan transactions. The traditional structure of an accessory mortgage did not, however, constitute a suitable, sufficient instrument meeting the needs of such transactions in the modern market economy, for which, it was noted, the important thing was to “mobilise” the value of land

[12] O. Stöcker*, L’«eurohypothèque*», *pionnier d’un marché*…, s. 14.
[13] O. Stöcker*, L’«eurohypothèque*», *pionnier d’un marché*…, s. 14; A. Wudarski*, W poszukiwaniu konstrukcji eurohipoteki*…, s. 213.
[14] Commission des Affaires Européennes de l’Union Internationale du Notariat Latin, *La cédule hypothécaire suisse et la dette foncière allemande – Étude comparative, base d’une future Eurohypothèque*, Stichting tot Bevordering der Notariële Wetenschap, Amsterdam, 1988.
[15] O. Stöcker*, L’«eurohypothèque*», *pionnier d’un marché* …, s. 14; zob. też np. Th. Wachter, *Die Eurohypothek – Grenzüberschreitende Kreditsicherung an Grundstücken im Europäischen Binnenmarkt*, Wertpapier Mitteilungen IV, 1999, s. 49.
[16] O. Stöcker*, L’«eurohypothèque*», *pionnier d’un marché* …, s. 14.

(German: *Bodenmobilisierung*, French: *mobilisation du sol*).[17] It was no accident that pledge rights began to be described as the so-called rights to value (German: *Wertrechte*).[18] Their purpose and function is not to exploit the encumbered good, but to cause its utilisation in order to satisfy a specific value from real estate. Since the dynamic expansion of the credit market, the function of pledge-based credit has also changed compared to the prototypical Roman *pignus*.

Taking advantage of the value of an immovable as a specific good used for smooth credit financing of various economic purposes was prevented primarily by the already mentioned accessory character of this pledge right that forged an absolute and permanent bond between a piece of real estate as the container of asset value and a specific debt, causing in particular the need to jointly dispose of a limited property right together and to transfer or abolish the secured right. The "fossil" solution in the form of mortgage pendent on a strictly defined real estate did not offer the possibility of linking the securing right with various other debts, and most of all required waiting for each entry in the relevant register (land book) in order to start loan financing. As noted by A. Doliński, "the newer mortgage is no longer merely a collateral backing a personal debt, as a mortgage loan has become one of the most common forms of depositing capital. The consequence is that a creditor granting a mortgage loan inquires not so much about the loans and solvency of his personal debtor, but rather the safety of the very object of mortgage (...) a mortgage no longer secures the personal loan of a debtor, but takes on an independent and fundamental meaning."[19]

Consequently, already in the second half of the 19th century, a discussion was being held in certain countries on solutions that eventually led to adopting provisions which made the structure of pledge rights on real estate more flexible, primarily to allow to modify the contents and scope of the securing pledge right according to changes in the secured real estate, as well as to loose, or even do away with, the traditional pendency of a pledge right on the secured real estate.

In addition, due to the attractive nature of the top (first) rank mortgage, another attractive solution was noticed that consisted in allowing the owner of real estate to dispose of such rank by reserving it for the collateral backing the most attractive debt considering the costs of the

[17] Zob. np. K. Zaradkiewicz, *O zasadności przywrócenia instytucji rentowego prawa rzeczowego na nieruchomości*, Kwartalnik Nieruchomości@ 2021, nr 3, s. 23-24.
[18] J. Kohler, *Lehrbuch des Bürgerlichen Rechts, Band II. Vermögensrecht. Teil 2: Sachenrecht*, Berlin 1919, s. 267 i n., s. 366 i n.; tenże, *Substanzrecht und Wertrecht*, AcP 1901, t. 91, s. 155 i n.; wyróżnienie praw wartości zdaje się pochodzić od F.P. Bremera – zob. F.P. Bremer, *Hypothek und Grundschuld*, Göttingen 1869, s. 54 i n.; w piśmiennictwie polskim zob. S. Grzybowski, *Prawo cywilne. Zarys prawa rzeczowego*, Warszawa 1989, s. 38; K. Zaradkiewicz, *Tzw. zastaw nieakcesoryjny w polskim prawie cywilnym. Uwagi ogólne na tle ustawy o zastawie rejestrowym i rejestrze zastawów*, Kwartalnik Prawa Prywatnego 2000, z. 2, s. 303–304; J. Jastrzębski, K. Zaradkiewicz, *Akcesoryjny dług gruntowy a problem jawności i odpowiedzialności*, *cz. I,* Przegląd Prawa Handlowego 2005, nr 5, s. 18.
[19] A. Doliński, *Hypoteka właściciela w projekcie noweli do kodeksu cywilnego i jej wpływ na kredyt hypoteczny,* Przegląd Prawa i Administracji 1914, z. 39, s. 173.

loan and then, should the rank become vacant due to repaying the mortgage, to allow the real estate owner to once again decide on establishing a new collateral with the same rank. This, in turn, required abandoning the idea that rights move (ascend) to higher rank (obtaining better priority, so-called mortgage succession) that results from the traditionally understood principle of priority of limited property rights. The new concept of fixed mortgage ranks could be implemented through various solutions that can generally be described as institutional forms of the so-called delayed mortgage rank, or rather the so-called non-accessory mortgage on own property.

It is telling that the above solutions were referred to in the discussion on desired changes in Polish mortgage law in the 1990s[20] which later, in 2009, led to passing provisions that gave an entirely new look to mortgage as a pledge right. These provisions introduced new and original solutions, only partially based on those existing in certain other legal systems.[21] At the same time, they are not free from controversy; similar solutions passed in France were later limited to professional transactions in recognition of major threats related to their use in transactions involving consumers.

The experience and variety of solutions aimed at "mobilising the value" of real estate by making mortgage law solutions more flexible can certainly serve as a basis for discussions on the optimal model of pan-European institution of the so-called euromortgage in the future.

IV. The variety of mortgage constructs in European legislations

1. General remarks

Contemporary European mortgage systems are still saddled with the traditional understanding of a mortgage as an accessory right, encumbering real estate, to the value of a thing. This pendency is a principle of mortgage law, although certain more or less broad exceptions are provided for. Such ideas prevail as a rule in France (Article 2393, previously 2114 of the French Civil Code), Austria (Article 447, 449 of the Austrian Civil Code), Spain (Article 1857 of the Spanish Civil Code of 1889, Article 104 of the Spanish mortgage law), Italy (Articles 2808-2809 of the Italian Civil Code of 1942[22]), Czech Republic (Articles 1309, 1335 et seq. of the Czech Civil Code of 2012), the Netherlands (Article 3:227 et seq. of the Dutch Civil Code of 1992), Portugal (Articles 689-693 of the Portuguese Civil Code of 1966) and a number of other countries.

[20] Zob. np. S. Rudnicki, *Hipoteka na rozdrożu*, Rejent 1998, nr 1, s. 12 i n.; S. Rudnicki, *Hipoteka, zastaw i przewłaszczenie na zabezpieczenie jako środki zabezpieczenia kredytu długoterminowego według prawa polskiego de lege lata i de lege ferenda,* [w:] *II Kongres Notariuszy Rzeczypospolitej Polskiej. Referaty i opracowania*, Poznań - Kluczbork 1999, s. 273 i n.

[21] Stanowiły one alternatywę dla przyjętego w pracach Komisji Kodyfikacyjnej Prawa Cywilnego rozwiązania wzorowanego na niemieckim długu gruntowym (o czym będzie mowa w drugiej części artykułu).

[22] *Decreto de* 8 *de febrero de* 1946 *por el que se aprueba la nueva redacción oficial de la Ley Hipotecaria,* BOE núm. 58, de 27/02/1946.

Until the entry in force of the currently effective mortgage law provisions in 2011, Polish legislation has also belonged to this group.

The classical schemes of pledge rights certainly do not fit the projected idea of euromortgage as a flexible right. An important element in the assessment and development of the future pledge right is to determine the possible degree of dependence on the debt(s) which the right is to secure. In this respect, two opposing traditions, Roman and Germanic, are mentioned. The first follows the principle of strict dependency of a pledge right on the secured debt. The Roman tradition has been abandoned to some degree several years ago in French legislation which was formerly based on it and, as already mentioned, in Poland. In the other approach, that is in legal systems based on Germanic traditions, the classic accessory mortgage is supplemented by self-standing rights to value. This is the case primarily in Switzerland (German: *Schuldbrief*, French: *la cédule hypothécaire*) and Germany (German: *Grundschuld*),[23] as well as in Denmark with respect to the owner's mortgage (Danish: *ejerpantebrev*).[24]

German and Swiss legislations have already at the turn of the 19th and 20th century introduced institutions of debt-independent property rights used for security, or possibly solutions that eliminate the dominant position of the mortgage creditor with respect to the owner of the encumbered real estate. These include the German land charge and the Swiss mortgage certificate. Similar solutions are today in effect also in certain other legal systems. The German, Swiss and Austrian legislations also allow the real estate owner to decide how to dispose of the mortgage (pledge) rank. However, no contemporary European legal system makes it possible to establish solely a self-standing (independent) mortgage whose contents would not in any way be tied to the secured pecuniary debt, as in the historic Mecklenburg law mortgage. The land charge may, to some extent, be recognised as such, since the essential difference between this limited property right and the classic mortgage is that disposing of the secured debt has no property law effect on the contents and existence of this right. In theory, it must be remembered that the extent of possible solutions concerning the degree to which an accessory property right and one or more debts are interlocked is very wide, from strict pendency to full independence of both subjective rights.[25] This is related to the fact that accessoriness in itself is not a uniform category and may appear in various forms.[26] The problem, however, lies in that wilful interference in the dimension of dependence of pledge

[23] O. Stöcker*, L'«eurohypothèque*», *pionnier d'un marché* …, s. 14.
[24] *O*. Stöcker, *Die „Eurohypothek": zur Bedeutung eines einheitlichen nicht-akzessorischen Grundpfandrechts für den Aufbau eines „Europäischen Binnenmarktes für den Hypothekarkredit" mit einer Darstellung der Verwendung der Grundschuld durch die deutsche Hypothekarkreditpraxis sowie des französischen, spanischen und schweizerischen Hypothekenrechts,* Berlin 1992, s. 201.
[25] Zob. np. O. *Soergel*, O. Stöcker, *EU-Osterweiterung und dogmatische Fragen des Immobiliarsachenrechts - Kausalität, Akzessorietät und Sicherungszweck*, Zeitschrift für Bankrecht und Bankwirtschaft 2002, z. 14, s. 416.
[26] Zob. na ten temat np. M. Habersack, *Die Akzessorietät – Strukturprinzip der europäischen Zivilrechte und eines künftigen europäischen Grundpfandrechts,* Juristenzeitung 1997, z. 18, s. 682–683.

rights without an explicit statutory basis is not allowed because of the principle of exhaustive list (*numerus clausus*) of property rights. This principle applies to rights to value as well.

The first "flexible" solution related to mortgage law is considered to date from the French Revolution, when institutions concerning mortgage on one's own thing and mortgage certificates were adopted in the mortgage law of 9 Messidor year III [27 June 1795 – trans. note].[27] This statue has never entered into force, however.[28] It was an important milestone in the development of mortgage legislation, since it paved the way for the possibility of "mobilising" immovables as an instrument of mortgage loan using mortgage certificates.[29] The attractiveness of this form of mortgage (in the form certificates) was related to its considerable liquidity (ease of transferability).[30]

The institution of mortgage certificates was proposed in drafts of property law produced by the Republic of Poland Codification Commission in the years 1934-1939,[31] only to be abandoned in the unified law of the late 1940s, mostly due to the political and economic realities then prevailing.

The issue of mortgage certificates was resumed after the transformations of the early 1990s. The proposal of introducing mortgage certificates found its expression in the draft act on debts on real estate produced by the Civil Law Condification Commission connected to the Minister of Justice which however, despite some work undertaken in parliament, ultimately failed to be passed.

2. German land charge deed

The land charge (German: *Grundrecht*, *Grundschuld*) was regulated for the first time in the Prussian mortgage law of 5 May 1872.[32] Already at that time the nature of this subjective right engendered doubts in legal writings. The structure of this peculiar right to value referred to some extent to the institution of non-accessory mortgage known to other German legislation systems (Hamburg, Lübeck, Mecklemburg[33]).[34] This solution, later introduced in the nationwide

[27] *Loi concernant le Code hypothécaire. Du 9 Messidor. Lois de la République française No. 164 (963).*
[28] Szerzej zob. np. J. Levita, *De la Réforme hypothécaire en France et en Prusse*, Paris 1852, s. 21 i n.; G. Rondel, *De la mobilisation du sol en France*, Paris, 1888; A. Simard, *De la cedule hypothécaire et du crédit agricole foncier*, Angoulême 1900; J. Chérest, *De la Mobilisation du Crédit Hypothécaire Au Moyen de Titres Négociables* (*Cédule et Lettre de Rente*), Paris 1912.
[29] Zob. np. J. Challamel, *Étude sur les cedules hypothécaires (Handfesten – Bons fonciers),* Paris 1878; F. Pouget, *Des cédules hypothécaires*, Paris 1902; M. Tourolle, *La cédule hypothécaire. Étude historique et critique,* Paris 1912, s. 6 i n.
[30] A. Ohanowicz, *Hipoteka listowa*, Gazeta Sądowa Warszawska 1938, nr 11, s. 162.
[31] Krytycznie: A. Ohanowicz, *Hipoteka listowa*, s. 161 i n.
[32] *Gesetz über den Eigenthumserwerb und die dingliche Belastung der Grundstücke, Bergwerke und selbstständigen Gerechtigkeiten, Gesetz-Sammlung* 1872, s.433 i n.; zob. np. H. Schott, *Ueber die accessorische Natur des Pfandrechts*, Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts 1877, t. XV, s. 6; St. Buchholz, *Abstraktionsprinzip und Immobiliarrecht. Zur Geschichte der Auflassung und der Grundschuld*, Frankfurt/ M. 1978, s. 347; M. Otten, *Sicherungsvertrag und Zweckerklärung*, Köln 2003, s. 36.
[33] Ritterschaftliche Hypothekenordnung z 1819 oraz Revidierte Ritterschaftliche Hypothekenordnung z 1848 r., Großherzoglich Mecklenburg-Schwerinsches officielles Wochenblatt 1819, nr 32 oraz 1848, nr. 51.
[34] Zob. np. V. von Meibom, *Deutsches Hypothekenrecht, t. II, Mecklenburgisches Hypothekenrecht*, Leipzig 1871, s. 145; P. von Roth, *System des deutschen Privatrechts*, Tübingen 1886, s. 527; S. Buchholz, *Abstraktionsprinzip und Immobiliarrecht*…, s. 258-260.

German Civil Code of 1896, forms an alternative to mortgage, which in turn comes in two forms: the more flexible conventional mortgage (*Verkehrshypothek*, cf. Article 116 of the German Civil Code) that involves issuing a mortgage bond document to the creditor, and the strictly accessorial debt-securing mortgage (*Sicherungshypothek*, Article 1184 et seq. of the German Civil Code). The choice of property-based security used is left to the interested parties. They can establish either a pledge right in the form of mortgage or a land charge.

According to the definition of land charge deed found in Article 1191, item 1 of the German Civil Code "a plot of land may be encumbered in such a way that the person in whose favour the encumbrance is created is paid a specific sum of money from the plot of land."[35] This is a self-standing, property right to value, classified together with mortgage as a pledge right on real estate, the so-called utilisation right (German: *Verwertungsrecht*). The property law nature of land charge may at first sight cause doubts, not only because it is referred to as "charge", but also due to the definition cited above saying that its essence is the payment "of a specific sum of money", and thus a consideration that consists in doing (German: *Zahlung eine(r) bestimmte(n) Geldsumme aus dem Grundstück*).[36] Property rights, however, do not make anyone, including the owner of the encumbered thing, obliged to provide consideration to the rightholder, but only to suffer the exercise of such rights by that person. Here it is enough to recall that these circumstances were the subject of a lively discussion among legal theorists already at the time when land charge was regulated in Prussian legislation, and also during work on the Civil Code draft.[37] Actually, this right represents an abstract value of the encumbered good which is expressed as specific amount of money (disclosed in the land book) which is to be granted to the rightholder and a such is subject to exercise in enforcement proceedings.

The Code speaks directly about the non-accessory character of land charge, stipulating that the charge is governed by provisions on mortgages accordingly, "unless the fact that the land charge requires the existence of a claim leads to a different conclusion" (Article 1192, item 1 of the German Civil Code). A land charge therefore remains independent of any other right, both upon establishment and following further disposals[38] (although Article 1992, item 1 of the Civil Code, added by the 2008 amending act, hints at the potential "accessorising" of this

[35] Polskie tłumaczenie przepisów k.c.n. cyt. w tekście na podstawie: Wydawnictwa Ministerstwa Sprawiedliwości Zbioru Ustaw Ziem Zachodnich. Tom X. *Kodeks cywilny obowiązujący na Ziemiach Zachodnich Rzeczypospolitej Polskiej (Przekład urzędowy)*, Warszawa-Poznań 1923.
[36] Zob. np. M.-Ph. Weller, *Die Sicherungsgrundschuld*, Juristische Schulung 2009, s. 969.
[37] Zob. zamiast wielu np. E. Fuchs, *Das Wesen der Dinglichkeit*, Berlin 1889, s. 52; E. Fuchs, *Das Wesen der Hypothek und Grundschuld. Pfandrecht oder Realobligation?*, Juristische Wochenschrift 1916, z. 1, s. 2 i n.; 1916, z. 2, s. 98 i n.; 1916, z. 4, s. 237 i n.; 1916, z. 5, s. 298 i n.; P. Puntschart, *Der Grundschuldbegriff des Deutschen Reichsrechtes in Gesetz und Literatur. Kritische Studie. Festschrift der Universität Graz aus Anlaß der Jahresfeier am 15.11.1900,* Graz 1900; O. von Gierke, *Deutsches Privatrecht. Zweiter Band. Sachenrecht*, Leipzig 1905, s. 909; K. Kindler, *Fiduziarische Grundschulden*, Breslau (Wrocław) 1919, s. 12; G. Meuschke, *Nicht-valutierte Grundschuld*, *insbesondere ihre Stellung in der Zwangsversteigerung*, Berlin 1931, s. 11 i n., w piśmiennictwie polskim: J. Jastrzębski, K. Zaradkiewicz, *Akcesoryjny dług gruntowy a problem…,* s. 17
[38] M.-Ph. Weller, *Die Sicherungsgrundschuld*, s. 969

institution). The non-accessory character is the essential difference between a land charge and a mortgage.[39]

This right may be supported by a land book entry or by certificate. In the first case, the establishment and transfer of a land charge occurs by entering it in the land book, and in the second by issuing a land charge certificate. The rule is to issue a mortgage or land charge supported by a certificate (German: *Briefhypothek*, *Briefgrundschuld*).

The 2008 amendment of the German Civil Code led to normative sanctioning and peculiar definition[40] of the so-called debt-securing land charge (German: *Sicherungsgrundschuld*). Pursuant to Article 1192, item 1a, point 1 of the German Civil Code, if a land charge has been established as security for a claim, defences to which the owner is entitled with regard to the land charge on the basis of the security agreement with the previous creditor, or which arise from the security agreement, may also be raised against any purchaser of the land charge.

The certificate may be issued already when the land charge is established, to the owner of the real estate themselves. The result is the so-called land charge for the owner (German: *Eigentümergrundschuld*, Article 1196 of the German Civil Code) which may be transferred to another person by issuing the certificate, without the need to enter the disposal in the land book. This so-called original land charge for the owner has an "isolated" nature; since it is not used for security, it must be entered in the land book (regardless of the place in which the debt certificate was issued) and serves, in essence, to allow reservation of mortgage rank (German: *Rangwahrungsgrundschuld*)[41] and the subsequent decision to grant value to a creditor if a resolution to take out a loan or credit is made. This right, as a right of the owner, may also arise due to transferring an encumbered real estate back to the owner.

As a certificate, a land charge may also be made out to the bearer (German: *Inhabergrundschuld*, Article 1195 of the German Civil Code).

The principal of the land charge falls due after a notice of termination period of six months, unless the parties agree otherwise (Article 1193 of the German Civil Code). Contractual modification is not allowed, however, when the land charge is used to secure a pecuniary debt. As already mentioned, the legislator now directly[42] (unlike in the original wording of the Code) provides for a special form of land charge as a right used to secure a debt (German: *Grundschuld der Sicherung einer Geldforderung*). If the creditor is the owner of a real estate

[39] Zob. np. D. Eickmann, *Die fiduziarisch gegebene isolierte Grundschuld als Rangsicherungsmittel*, Neue Juristische Wochenschrift 1981, z. 11, s. 545.
[40] M.-Ph. Weller, *Die Sicherungsgrundschuld*, s. 969.
[41] Zob. np. D. Eickmann, *Die fiduziarisch gegebene isolierte Grundschuld*…, s. 545 i n.
[42] *Gesetz zur Begrenzung der mit Finanzinvestitionen verbundenen Risiken* (*Risikobegrenzungsgesetz*) *vom* 12.08.2008 (BGBl. I S. 1666).

encumbered with a land charge, they may not obtain satisfaction from real estate in enforcement proceedings (cf. Article 1197 of the German Civil Code).

In practice, land charge is usually used as a non-accessory instrument to secure one or more debts. The institution of the so-called isolated land charge (German: *isolierte Grundschuld*) remains almost useless in practice. Securing a debt with land charge occurs by establishing a trust bond between these rights by means of an agreement of obligation. In literature, such an agreement is called a "securing agreement" (German: *Sicherungsvertrag*, *Sicherungsabrede*, *Sicherungszweckvereinbarung*). The obligation relationship resulting from that agreement does not alter the contents of the land charge, which remains non-accessorial. Entering into the agreement, however, results in limitations between the parties, and the land charge linked to the debt is called a so-called debt-securing land charge (German: *Sicherungsgrundschuld*).[43]

A special, but in practice defunct form of land charge, is the so-called annuity land-charge.[44] According to the definition of this limited property right, a land charge may be created in such a way that a specific sum of money is payable from the plot of land on regularly recurring dates (Article 1199, item 1 of the German Civil Code). When the annuity land charge is created, the so-called redemption sum that can be paid to redeem the charge must be entered in the land book (just as in case of land rents, cf. Article 1199, item 2 of the German Civil Code).

One of the advantages of the German land charge is said to be its flexibility which implies the practical possibility of avoiding the costs related to establishing a new mortgage (in connection with expiry of the former pledge right due to the expiry of the secured debt).[45] More importantly, a land charge may be converted into a mortgage, and vice versa (Article 1198 of the German Civil Code), while a mortgage by itself may subsequently be used to secure another debt (cf. Article 1180 of the German Civil Code) and may, to a certain extent, be vested in the owner of the encumbered real estate (*Eigentümerhypothek*, Articles 1163, 1179-1179b of the German Civil Code). Merely as an aside, it is worth mentioning that in Austrian law (cf. Articles 469-469a and Article 1446 of the Austrian Civil Code, Article 1385 of the Czech Civil Code) an owner's mortgage may be vested in the owner of the encumbered real estate as a special right not connected to the secured debt.

---

[43] Zob. np. Th. Komanns, *Das Grundpfandrecht als fiduciarische Sicherheit* (*Ein Beitrag zur Lehre von der Sicherungsgrundschuld.*), Düsseldorf 1939, s. 9; U. Huber, *Die Sicherungsgrundschuld*, Heidelberg 1965; R. Serick, *Eigentumsvorbehalt und Sicherungsübertragung. Band II. Die einfache Sicherungsübertragung – Erster Teil*, Heidelberg 1965, s. 411; H. Wolfsteiner [w:] *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen, Drittes Buch: Sachenrecht,* §§ *1113–1203*, red. W. Wiegand, Berlin 1996, s. 635 i n.; J. Jastrzębski, K. Zaradkiewicz, *Akcesoryjny dług gruntowy a problem…,* s. 18.

[44] K. Zaradkiewicz, *O zasadności przywrócenia instytucji rentowego prawa rzeczowego*…, s. 23-24.

[45] O. Stöcker*, L'«eurohypothèque*», *pionnier d'un marché* …, s. 14.

On the German market, land charge has almost completely superseded the classic mortgage as a form of security.[46] An analogous solution is known to Slovenian Law (cf. section 3). Not all mortgage systems based on German law have adopted this peculiar solution, however. Non-accessory land charge does not appear as a pledge right in Latvian or Japanese law, even though these systems are based on the German codification of 1896.

3. Slovenian land charge

Land charge was codified also in the Slovenian Code of Property Law[47] (Slovenian: *zemljiški dolg*, Article 192 et seq.). The relevant provisions have however been abolished in 2013[48] because of flawed behaviours that consisted in establishing land charges in the first mortgage rank with the intention of avoiding enforcement from real estate (to the detriment of creditors).

Any rights previously established continue to exist, however. The Slovenian land charge is a limited property right to demand the payment of a certain sum of money from the value of real estate in preference to other creditors with an inferior ranking. The payment must not be bound by a condition. The provisions on mortgages apply accordingly to a land charge, except as otherwise provided for in statute (Article 193). A land charge may be established as a result of a unilateral legal transaction of the owner in the form of a notarial deed together with entering the charge into the land and mortgage register and issuing a land certificate (Slovenian: ***zemljiške pismo***). The certificate was issued by a court maintaining the land and mortgage register for the encumbered real estate (Article 196) and allows subsequent disposal of debt (Article 197), including its pledge (Article 198). The certificate also serves as an enforcement title (Article 199, item 2 of the Code). It is also possible to convert a land charge into a mortgage (Article 194, item 2).

The owner of an encumbered real estate is obliged to repay the land charge on maturity to the entitled holder of the certificate (Article 199, item 1). The land charge is extinguished when deleted from the land and mortgage register, however this is possible only after the land certificate has been submitted (Article 200).

The Slovenian legislator did not codify any form of the so-called book form of land charge, nor provide for the possibility of establishing it as an annuity land charge (German: *Rentengrundschuld*), probably due to considering that both these categories will not be useful in practical transaction, just as in German law.

4. Swiss mortgage certificate

[46] A. Drewicz-Tułodziecka, A. Gregorowicz, *Dług gruntowy jako uzupełnienie katalogu zabezpieczeń na nieruchomościach*, Prawo Bankowe 2005, z. 3, s. 44, przyp. 19; J. Pisuliński, *O planowanej nowelizacji ustawy o księgach wieczystych i hipotece i wprowadzeniu długu gruntowego*, Kwartalnik Prawa Prywatnego 2003, z. 3, s. 838.
[47] Stvarnopravni zakonik (SPZ), UL št. 87, 17.10.2002.
[48] *Zakon o spremembah Stvarnopravnega zakonika (SPZ-A), stran 9838.*

The debt (mortgage) certificate was adopted in the Swiss Civil Code based on cantonal legislation (for example the Zürich canton law from 1887). As a result of a reform in 2012, the register mortgage certificate (German: *Register-Schuldbrief*, French: *cédule hypothécaire de registre*), unlike the earlier mortgage certificate on paper (German: Papier-Schuldbrief, French: *cédule hypothécaire sur papier*) was introduced as a non-document form. With this, the mortgage certificate has ceased to be purely a security (although it can still be issued as such). An analogous change was adopted in the legislation of Liechtenstein.

In Swiss law, a mortgage certificate is a special legal institution representing a personal debt incorporated in a document and secured by a pledge right on real estate (Article 842, item of the Swiss Civil Code). Personal liability is auxiliary with respect to property-based liability from real estate.[49]

A register mortgage certificate is created and may be transferred upon an entry in the land book (Article 857, item 1 of the Swiss Civil Code) and may be recorded in the name of the creditor or the real estate owner. On the other hand, a certificate in the traditional (paper) form requires, in addition to an entry in the land book, the issue of a document of title (German: *Pfandtitel*) by the land book office, and the bearer of the document may, in addition to the real estate owner (in case of an owner's mortgage certificate), be named as the entitled creditor. In the absence of an agreement to the contrary, the mortgage certificate, where applicable, co-exists with the debt to be secured that arises from the basic relationship between the creditor and the debtor (Article 842, item 2 of the Swiss Civil Code). The debtor of a mortgage certificate may raise personal objections arising from the basic relationship against the creditor and their legal successors where they do not act in good faith (item 3).

In Switzerland, the mortgage certificate superseded the institution of the so-called rent certificate (German: *Gütt*, French: *lettre the rente*, former Articles 847-853 of the Swiss Civil Code); however, in cantonal legislation the traditional mortgage can be found as well.[50]

The institution of rent certificate was similar to the German rent charge certificate and belonged to the category of pledge rights on real estate (cf. Article 793 of the Swiss Civil Code). As in German law, in Switzerland a land charge in its rent form was not popular in practice either. As a defunct institution, it was eliminated by introducing the registered mortgage certificate in the 2012 reform of mortgage law.[51] In addition to Swiss law, it was also known to property law in Liechtenstein.

5. French reverse mortgage

[49] Zob. szerzej w piśmiennictwie polskim: B. Swaczyna, *Szwajcarski* Schuldbrief *jako ewentualny wzór dla polskiego ustawodawcy*, Studia Prawa Prywatnego 2009, z. 2, s. 144 i n.
[50] O. Stöcker*, L'«eurohypothèque*», *pionnier d'un marché* …, s. 14.
[51] K. Zaradkiewicz, *O zasadności przywrócenia instytucji rentowego prawa rzeczowego*…, s. 23-24.

The institution of reverse mortgage (French: *hypothèque rechargeable*) was introduced in French law by a 2006 reform[52] that dealt with various security institutions, including the introduction of autonomous guarantee (French: *garantie autonome*) and the right of retention of title for guarantee purposes (French: *propriété retenue à titre de garantie*). The regulation then issued amended among others the provisions of the French Civil Code. Reverse mortgage was also to some extent codified in book 3, title 1, chapter 6, section 6 of the Consumer Code entitled "Mortgage loan secured with reverse mortgage" (French: *crédit hypothécaire garanti par une hypothèque rechargeable*). It is worth mentioning that a major change in mortgage law was the possibility of establishing, in certain special cases, a mortgage on real estate to come.

A contractual mortgage on real estate may be established on the basis of a transaction in the form of a notarial deed. Article 2421 of the French Civil Code, introduced at that time, stated that a mortgage may be granted for security of one or several debts, existing or to come. Where the debts are future debts, they must be determinable, and the grounds (*cause*) must be specified in the transaction establishing the mortgage. In addition, a mortgage may be subsequently allocated to secure debts other than those mentioned in the constitutive instrument, provided that the latter lays so down expressly, also for a new creditor (Article 2422 of the French Civil Code). The pledge right was always to be granted, up to a fixed sum of principal stated in the notarial instrument (with the possibility of designating the so-called index-linking clause, Article 2423 of the French Civil Code), inclusive of claims for interest and other additional liabilities. Finally, a reverse mortgage can be established to secure a registration rank (French: *rang d'inscription*) for a creditor with lower priority of satisfaction, as well as to secure multiple future debts, including for an indefinite time, while the interested creditors may assign the pledge right to another debt (Article 2424 of the French Civil Code).

The reverse mortgage was abolished in March 2014[53] and then restored in the act of 20 December 2014.[54] While working on the draft of consumer provisions in late 2013, it was decided that a similar solution in the United States contributed to the financial crisis and led to unbalanced indebtedness of some households which became insolvent, and also to economic growth artificially inflated by consumer credit. In France, on the other hand, this solution was rarely applied, if only because of the financial crisis.[55] Consequently, it was thought advisable to eliminate it.

[52] *Ordonnance n°* 2006-346 *du* 23 *mars* 2006 *relative aux sûretés, NOR:JUSX0600032R,* JORF n°71 *du 24 mars 2006.*
[53] *Loi n°* 2014-344 *du* 17 *mars* 2014 *relative à la consommation*, NOR:EFIX1307316L, JORF n° 0065 *du* 18 *mars* 2014.
[54] *Loi n°* 2014-1545 *du* 20 *décembre* 2014 *relative à la simplification de la vie des entreprises et portant diverses dispositions de simplification et de clarification du droit et des procédures administratives*, NOR:EINX1412185L, JORF n°0295 *du* 21 *décembre* 2014.
[55] Rapport n° 1156 déposé le 13 juin 2013.

According to the new wording of the French Civil Code, the scope of reverse mortgage was limited to professional transactions. It was argued that introducing this flexible pledge right in transactions between entrepreneurs would contribute to making mortgage loans simpler and cheaper (lowering costs).

Currently, pursuant to Article 2422 of the Civil Code in the wording contained in the 2014 version, a mortgage established for professional purposes by a natural or legal person may subsequently be assigned to secure debts of a professional other than those listed in the instrument establishing the mortgage, if expressly provided for therein. The person establishing the mortgage may then assign the security based on a security novation agreement (French: *convention de rechargement*), up to the amount provided for in the constitutive instrument and specified in Article 2423, not only to the original creditor (French: *créancier originaire*), but also to a new creditor even if the first one has not been paid.

6. The Estonian mortgage

A mortgage as a right that can exist independently, i.e. without the secured real estate, has been introduced in Estonian law (Article 325 et seq. of the Property Law Act of 1993).[56] As it appears, this was a decision rooted in the proposed Civil Code of 1940 (Estonian: *Tsiviilseadustik*) which, however, has not been adopted due to Soviet invasion and occupation. The code provided for introducing the institution of land charge (Estonian: *kinnisvõlg*, Article 1269 et seq. of the 1940 draft) based on German models, which, however, has not been directly transplanted from the German code of 1896.

Pursuant to Article 325, item 1 of the Property Law Act, real estate may be encumbered with a mortgage such that the person for whose benefit the mortgage is established (mortgage creditor) has the right to satisfaction of a claim secured by the mortgage out of the pledged real estate. Similarly to German law, in case the of a land charge the pledge right may be established for the benefit of the owner of the encumbered real estate (*ius in rem suam*, the so-called original owner's mortgage, Article 328 of the Act). It is also possible to acquire an owner's mortgage subsequently, that is when security is released from the debt (for example in case of discharging or extinction, Article 329). Importantly, entering a mortgage does not presume the existence of the claim to be secured (Article 325, item 4 of the Act).

An Estonian mortgage may be divided (Article 355). If a claim secured by a mortgage is satisfied or a claim did not arise, the actual owner of the encumbered real estate may demand entry of the mortgage in the name of the owner or its deletion, unless otherwise agreed (Article 349). If a claim secured by a mortgage is partially satisfied, the actual owner of the encumbered real estate may demand the partial mortgage to be entered in the land book for the owner's

[56] *Asjaõigusseadus*, Riigi Teataja I 1993, 39, 590 ze zm.

benefit to the extent the claim was satisfied, or deleted. However, if a claim secured by the mortgage has been paid by the owner of the encumbered real estate who is not the debtor, the claim passes to the owner to the extent to which it was satisfied. In such case, the provisions of the Obligations Act concerning surety apply.

7. Hungarian independent pledge

An independent pledge was known in Hungarian civil law even before the 2013 codification.[57] It should be mentioned that between the wars, the land charge institution based on German law was introduced in Hungarian legislation.[58] The new Hungarian Civil Code once again codifies an independent pledge on behalf of a financial institution (Article 5:100 of the Hungarian Civil Code of 2013),[59] similarly to the previously amended 1959 Code (Hungarian: *önálló zálogjog*, Article 269 of the former Civil Code in the wording adopted in the 1996 amendment).[60] This right may be established independently of the secured debt and encumbers the object of pledge up to a specific amount. The pledge agreement should specify the conditions of exercising a pledge right and name the amount up to which satisfaction can be sought. Such amount should also be disclosed in the land and mortgage register.

If the independence of an independent pledge from the secured debt does not require otherwise, provisions on securing pledge apply accordingly to such pledge. An independent pledge may be transferred to another financial institution both in whole or in part. In the latter case, the limited property right is divided.

To satisfy the pledgor, both the pledgor and the pledgee may terminate the pledge with six months of notice, unless the pledge agreement provides otherwise. The pledgee may bring any objections to which the debtor of the debt named in the pledge agreement is entitled.

The purchaser of an encumbered real estate subrogates to the rights and obligations of the pledgee in the agreement specifying the secured debts (security agreement). To secure the return claim, the debtor, pledgee or a third party who satisfies the debt to be secured according to the security agreement, if not a financial institution, is entitled to a pledge securing the debt instead of and in the same rank as the independent pledge. As security for the return claim, an independent pledge passes to the financial institution that satisfied the claim.

[57] *2013. évi V. törvénya Polgári Törvénykönyvről.*
[58] Dług gruntowy wprowadzony był w ustawie hipotecznej z 1927 r., a także był przewidywany jako dopuszczalne obciążenie nieruchomości w projekcie kodeksu cywilnego z 1928 r.; por. np.: L. Vékás. *Ungarn* [w:] Ch. von Bar (red.), *Sachenrecht in Europa. Band 2. Polen. Tschechien. Ungarn*, Osnabrück 2000, s. 186.
[59] Zob. np.: L. Jójárt, P. Györfi-Tóth, *Immobiliarsachenrecht in Ungarn*, wyd. 2, Wien 2001, s. LXXXVIII, XCVIII i n.; L. Vékás. *Ungarn* …, s. 186; K. Andová, *Das Mobiliarpfandrecht in* Österreich*, Ungarn, Tschechien und in der Slowakei unter besonderer Berücksichtigung des besitzlosen Pfandrechts*, Wien 2004, s. 94.
[60] *W brzmieniu nowelizacji z 2016 r.: 2016. évi LXXVII. Törvény a Polgári Törvénykönyvről szóló 2013. évi V. törvény módosításáról.*

If the security agreement is not entered into, the purpose of the pledge specified in the agreement disappears or the debt which could be satisfied expires, or if another circumstance occurs that causes the pledge to become extinct, the pledgor is obliged to grant consent to enter a financial institution designated by them to the mortgage and land register as a pledgor or to delete this right from the mortgage and land register.

An independent pledge may be converted into a pledge securing a debt, and vice versa, with the consent of the parties, by entering the conversion in the land and mortgage register with the former priority. The consent of pledgors having the same or lower rank is not required.

8. Other solutions – short mentions

In 2014,[61] Belgian law introduced a new solution called "mortgage for all sums" (French: *hypothèque pour toutes sommes, hypothéque omnibus*, Dutch. *hypoteek voor alle sommen*). According to the new Article 81bis of the mortgage law (*loi hypothécaire du 16 décembre 1851*), a mortgage security may be established for future debts, provided that when the debt security is established such debts have been or can be determined. The rank (priority) of the mortgage is determined on the date of entry, regardless of the date on which the secured debts arose. If the debts can arise for an indefinite time, the mortgage is subject to termination by observing a period of notice ranking from three to six moths. With respect to future debts, the result of the termination is that the mortgage security includes only those secured rights that exist at the end of the notice period. In the case of agreements entered into for an indefinite period, security extends only to debts existing at the lapse of the notice period.

A flexible nature of the mortgage is also an advantage of the English system. However, disadvantages of the far-reaching flexibility in developing the rights and obligations of parties to an agreement establishing a mortgage are also noticed, because "it is not known what the contents of the mortgage is before reading the notarial deed."[62]

Bibliografia:

1. Andová K., *Das Mobiliarpfandrecht in* Ősterreich*, Ungarn, Tschechien und in der Slowakei unter besonderer Berücksichtignung des besitzlosen Pfandrechts*, Wien 2004.
2. Bremer F.P., *Hypothek und Grundschuld*, Göttingen 1869.
3. Buchholz St., *Abstraktionsprinzip und Immobiliarrecht. Zur Geschichte der Auflassung und der Grundschuld*, Frankfurt/M. 1978.
4. Challamel J., *Étude sur les cedules hypothécaires (Handfesten – Bons fonciers),* Paris 1878.

[61] Loi du 19 avril 2014 portant insertion du livre VII „Services de paiement et de crédit" dans le Code de droit économique, portant insertion des définitions propres au livre VII et des peines relatives aux infractions au livre VII, dans les livres I et XV du Code de droit économique, et portant diverses autres dispositions.

[62] O. Stöcker*, L'«eurohypothèque*», *pionnier d'un marché* …, s. 14.

5. Chérest J., *De la Mobilisation du Crédit Hypothécaire Au Moyen de Titres Négociables* (*Cédule et Lettre de Rente*), Paris 1912.
6. Commission des Affaires Européennes de l'Union Internationale du Notariat Latin, La cédule hypothécaire suisse et la dette foncière allemande – *Étude comparative, base d'une future* Eurohypothèque, Stichting tot Bevordering der Notariële Wetenschap, Amsterdam, 1988.
7. *Der Aufbau eines Europäischen Kapitalmarkts: Bericht einer von der EWG- -Kommission eingesetzten Sachverständigengruppe,* 1966.
8. Doliński A., *Hypoteka właściciela w projekcie noweli do kodeksu cywilnego i jej wpływ na kredyt hypoteczny,* Przegląd Prawa i Administracji 1914, z. 39.
9. Drewicz-Tułodziecka A. (red.), *Basic Guidelines for a Eurohypothec, Outcome of the Eurohypothec workshop November 2004/April 2005*, Warszawa 2005.
10. Drewicz-Tułodziecka A., Gregorowicz A., *Dług gruntowy jako uzupełnienie katalogu zabezpieczeń na nieruchomościach*, Prawo Bankowe 2005, z. 3.
11. Eickmann D., *Die fiduziarisch gegebene isolierte Grundschuld als Rangsicherungsmittel*, Neue Juristische Wochenschrift 1981, z. 11.
12. Fuchs E., *Das Wesen der Dinglichkeit*, Berlin 1889.
13. Fuchs E., *Das Wesen der Hypothek und Grundschuld. Pfandrecht oder Realobligation?*, Juristische Wochenschrift 1916, z. 1-5.
14. Gierke O. von, *Deutsches Privatrecht. Zweiter Band. Sachenrecht*, Leipzig 1905.
15. Grzybowski S., *Prawo cywilne. Zarys prawa rzeczowego*, Warszawa 1989.
16. Habersack M., *Die Akzessorietät – Strukturprinzip der europäischen Zivilrechte und eines künftigen europäischen Grundpfandrechts,* Juristenzeitung 1997, z. 18.
17. Huber U., *Die Sicherungsgrundschuld*, Heidelberg 1965.
18. Jastrzębski J., Zaradkiewicz K., *Akcesoryjny dług gruntowy a problem jawności i odpowiedzialności*, *cz. I,* Przegląd Prawa Handlowego 2005, nr 5.
19. Jójárt L., Györfi-Tóth P., *Immobiliarsachenrecht in Ungarn*, wyd. 2, Wien 2001.
20. Kindler K., *Fiduziarische Grundschulden*, Breslau (Wrocław) 1919.
21. Kohler J., *Lehrbuch des Bürgerlichen Rechts, Band II. Vermögensrecht. Teil 2: Sachenrecht*, Berlin 1919.
22. Kohler J., *Substanzrecht und Wertrecht*, AcP 1901, t. 91.
23. Komanns Th., *Das Grundpfandrecht als fiduciarische Sicherheit* (*Ein Beitrag zur Lehre von der Sicherungsgrundschuld.*), Düsseldorf 1939.
24. Komisja Europejska, *Zielona Księga. Kredyt hipoteczny w UE*, KOM(2005) 327 wersja ostateczna.
25. Komisja Europejska, *Biała Księga dotycząca integracji rynków kredytu hipotecznego w UE*, KOM(2007) 807 wersja ostateczna.

26. Levita J., *De la Réforme hypothécaire en France et en Prusse*, Paris 1852.
27. Meibom V. von, *Deutsches Hypothekenrecht, t. II, Mecklenburgisches Hypothekenrecht*, Leipzig 1871.
28. Meuschke G., *Nicht-valutierte Grundschuld*, *insbesondere ihre Stellung in der Zwangsversteigerung*, Berlin 1931.
29. Ohanowicz A., *Hipoteka listowa*, Gazeta Sądowa Warszawska 1938, nr 11.
30. Otten M., *Sicherungsvertrag und Zweckerklärung*, Köln 2003.
31. Pisuliński J., *O planowanej nowelizacji ustawy o księgach wieczystych i hipotece i wprowadzeniu długu gruntowego*, Kwartalnik Prawa Prywatnego 2003, z. 3.
32. Pouget F., *Des cédules hypothécaires*, Paris 1902.
33. Puntschart P., *Der Grundschuldbegriff des Deutschen Reichsrechtes in Gesetz und Literatur. Kritische Studie. Festschrift der Universität Graz aus Anlaß der Jahresfeier am 15.11.1900,* Graz 1900.
34. Rondel G., *De la mobilisation du sol en France*, Paris, 1888.
35. Roth P. von, *System des deutschen Privatrechts*, Tübingen 1886.
36. Rudnicki S., *Hipoteka na rozdrożu*, Rejent 1998, nr 1.
37. Rudnicki S., *Hipoteka, zastaw i przewłaszczenie na zabezpieczenie jako środki zabezpieczenia kredytu długoterminowego według prawa polskiego de lege lata i de lege ferenda,* [w:] *II Kongres Notariuszy Rzeczypospolitej Polskiej. Referaty i opracowania*, Poznań - Kluczbork 1999.
38. Schott H., *Ueber die accessorische Natur des Pfandrechts*, Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts 1877, t. XV.
39. Serick R., *Eigentumsvorbehalt und Sicherungsübertragung. Band II. Die einfache Sicherungsübertragung – Erster Teil*, Heidelberg 1965.
40. Simard A., *De la cedule hypothécaire et du crédit agricole foncier*, Angoulême 1900.
41. *Soergel* O., Stöcker O., *EU-Osterweiterung und dogmatische Fragen des Immobiliarsachenrechts - Kausalität, Akzessorietät und Sicherungszweck*, Zeitschrift für Bankrecht und Bankwirtschaft 2002, z. 14.
42. Stöcker O., *Die „Eurohypothek": zur Bedeutung eines einheitlichen nicht- - akzessorischen Grundpfandrechts für den Aufbau eines „Europäischen Binnenmarktes für den Hypothekarkredit" mit einer Darstellung der Verwendung der Grundschuld durch die deutsche Hypothekarkreditpraxis sowie des französischen, spanischen und schweizerischen Hypothekenrechts,* Berlin 1992.
43. Stöcker O.*, L'«eurohypothèque*», *pionnier d'un marché intérieur du crédit hypothécaire*, Banque & Droit no. 49, septembre-octobre 1996.
44. Stöcker O., Stürner R. (red.), *Flexibilität, Sicherheit und Effizienz der Grundpfandrechte in Europa*, Band III, 3. erweiterte Auflage, VDP-Schriftenreihe, Vol. 50, Berlin 2012.

45. Swaczyna B., *Szwajcarski* Schuldbrief *jako ewentualny wzór dla polskiego ustawodawcy*, Studia Prawa Prywatnego 2009, z. 2.
46. Tourolle M., *La cédule hypothécaire. Étude historique et critique,* Paris 1912.
47. Vékás L., *Ungarn* [w:] Ch. von Bar (red.), *Sachenrecht in Europa. Band 2. Polen. Tschechien. Ungarn*, Osnabrück 2000.
48. Wachter Th., *Die Eurohypothek – Grenzüberschreitende Kreditsicherung an Grundstücken im europäischen Binnenmarkt*, Wertpapier Mitteilungen IV, 1999.
49. Weller M.-Ph., *Die Sicherungsgrundschuld*, Juristische Schulung 2009.
50. Wolfsteiner H., [w:] *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen, Drittes Buch: Sachenrecht,* §§ *1113-1203*, red. W. Wiegand, Berlin 1996.
51. Wudarski A., *W poszukiwaniu konstrukcji eurohipoteki*, Kwartalnik Prawa Prywatnego 2009, z. 1.
52. Wydawnictwa Ministerstwa Sprawiedliwości Zbioru Ustaw Ziem Zachodnich. Tom X. *Kodeks cywilny obowiązujący na Ziemiach Zachodnich Rzeczypospolitej Polskiej (Przekład urzędowy)*, Warszawa-Poznań 1923.
53. Zaradkiewicz K., *O zasadności przywrócenia instytucji rentowego prawa rzeczowego na nieruchomości*, Kwartalnik Nieruchomości@ 2021, nr 3.
54. Zaradkiewicz K., *Tzw. zastaw nieakcesoryjny w polskim prawie cywilnym. Uwagi ogólne na tle ustawy o zastawie rejestrowym i rejestrze zastawów*, Kwartalnik Prawa Prywatnego 2000, z. 2.