THE INFLUENCE OF SOVIET LAW ON THE LEGAL REGULATIONS OF PROPERTY IN POLAND (1944–1990)

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The aim of this paper is to show how the Marxist conception of ownership was introduced in Poland after World War II, and how it was then removed. The paper shows also to what extent the regulations introduced in Poland were different from the ones in force in the Soviet Union. In particular, the provisions of the Constitution of the Polish People's Republic of 1952 and the Civil Code of 1964 are elucidated. The author points out that contemporary Polish courts sometimes question the legal meaning of some civil-law institutions from the period of 1944–1989.

Keywords: property law; social property; individual property; Polish People's Republic; single state property fund; Constitution of the Polish People's Republic of 1952.

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Introduction

It is known that Marx defined Communism as a system in which "bourgeois property," i.e. private ownership related to the means of production, is abolished.[1] An attempt to implement this idea was made in Soviet Russia after the Bolshevik Revolution. A Polish scholar, Adam Lityński, qualifies the changes that took place at that time as unprecedented in the history of the world. Tsarist law ceased to exist completely, and by the summer of 1918 ownership relations were completely changed (in Lityński's words: "the most thorough expropriation in history"). The changes were revolutionary: the law of succession was abolished, the law of obligations was changed, and family law was based on completely new rules. Equally important, the distinction between the *ius privatum* and *ius publicum* virtually ceased to apply, and issues previously covered by civil law became subject to public law. Lityński also contends that this change was a novelty in legal development.[2]

The aim of this paper is to show how the Marxist conception of ownership was introduced in Poland after World War II, and how it was then removed. The author's objective is to show that, due to social conditions, the full transformation of Polish property law according to a Soviet pattern was not possible. Therefore, even if the theoretical concepts of such authors as Anatoly V. Venediktov were introduced to Polish scholarly literature in the 1950s, they were implemented into legislation as late as the 1960s. By this time, however, it was obvious that, e.g., introduction of social property into agriculture was virtually impossible on a large scale. After 1989 the regulations of social property were treated only as a burden which should be thrown off as quickly as possible. The paper also shows the way in which contemporary Polish courts treat property law institutions which functioned before the period of transformation.

1. The Initial Period

In the Polish lands occupied by the Red Army, Communists began to take over in the summer of 1944; the formal manifestation of their power was the so-called Manifesto of the Polish National Liberation Committee of 22 July 1944. The changes in substantive law they introduced were not as deep as those introduced in Soviet Russia after the October Revolution. The reasons for this were quite obvious. First, in the USSR, the Civil Code of the Russian Soviet Federative Socialist Republic of 1922 (with changes introduced in the late 1920s) and the Constitution of the USSR of 1936

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[1] Sean Sayers, *Marx and Alienation: Essays on Hegelian Themes* 101 (Basingstoke; New York: Palgrave Macmillan, 2011).

[2] Adam Lityński, *Prawo Rosji i ZSRR 1917–1991, czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs* [*The Law of Russia and the USSR 1917–1991: The History of the All-Union Communist Law (of Bolsheviks). Short Course*] 200 (2nd ed., Warsaw: C.H. Beck, 2012).

established the basis of property law. These legal acts emphasized the protection of socialist property, but they were far from the radicalism of the Communists' first decisions, at the turn of 1917 and 1918. Secondly, it was decided that in Poland, the approach to the Soviet model of property law would be to introduce it gradually.[3]

The Communists' first decision concerning property law was the issuance of the Decree of the Polish National Liberation Committee of 6 September 1944 on the implementation of agricultural reform.[4] It was issued to show that the pre-war Polish government had promised to carry out an agricultural reform, but that reform was not carried out, while the Communist government was able to bring about the reform. The effect of the Decree was to allocate land to dwarf farms and to give land to landless peasants, while farms benefitting from the reform could not have more than five hectares of medium-quality land (Art. 13(2)). Somewhat paradoxically and contrary to the Soviet model, the Decree led to the emergence of farms which were small but owned by farmers themselves. The model of collectivized agriculture was be implemented later, as a result of agricultural cooperatives.[5] Still in 1944, legal regulations permitting the state to take over forest property were adopted.[6]

It must be pointed out here that before World War II it was not possible to finalize the unification of *in rem* law. There were four basic systems for regulating this law in the Polish lands: the Napoleonic Code, the German BGB, the Austrian ABGB and the Russian law (from the Tsarist period). Just after World War II, this law was unified by the Decree of 11 October 1946 on property law.[7] Interestingly, it does not refer to Soviet law at all, but to the achievements of the pre-war Polish codification commission. The Decree adopted the French solutions in the field of land transfer. Article 43 provided that the agreement between the owner and the purchaser effected the transfer of ownership. Article 28 granted the owner the right to use objects, but not other persons, within the limits specified by the law, and to dispose of such items. The Decree did not contain any provisions referring to Communist

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[3] *See also* Jan Wasilkowski, *Prawo rzeczowe. Cz. 1* [*Property Law. Part I*] 42–50 (Warsaw: Państwowe Wydawnictwo Naukowe, 1952). *See* Maciej Bużowicz, *Ewolucja prawa własności w Polsce Ludowej w latach 1944–1956* [*The Evolution of Property Rights in the Polish People's Republic 1944–1956*], 10 Wrocławskie Studia Erazmiańskie. Studia Erasmiana Wratislaviensia 485, 486–494 (2016).

[4] Dziennik Ustaw [Journal of Laws], No. 4, item 17.

[5] On agricultural reform, *see* Anna Machnikowska, *Prawo własności w Polsce w latach 1944–1981. Studium historycznoprawne* [*Property Law in Poland 1944–1981. Historico-Legal Study*] 178–200 (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2010). Among the literature from the period of the Polish People's Republic, *see* Andrzej Stelmachowski, *Kształtowanie się ustroju rolnego w Polsce Ludowej* [*Formation of the Agricultural System in People's Poland*] in Tadeusz Kuta et al., *Prawo rolne* [*Agricultural Law*] 73 (Wrocław: Uniwersytet Wrocławski, 1966).

[6] Decree of the Polish National Liberation Committee of 12 December 1944 on the acquisition of certain forests for State Treasury ownership (Journal of Laws, No. 15, item 82). The Decree introduced the principle that the state had a right to take over the property forests of more than 25 ha (Art. 1(1)).

[7] Journal of Laws, No. 57, item 319.

ideology.[8] As noted by the expert scholar in this subject, Anna Machnikowska, the view still prevailed that

> the right of ownership retained its classical construction, but functioned in partially altered external conditions. One of them was the extensive introduction of the state into the rights of the owner; the other, the dissemination of property rights in the rural economy.[9]

However, in 1950 "general provisions of civil law" were issued.[10] They introduced two principles that were relevant for the interpretation of property rights. The general clause of abuse of a subjective right was supplemented with a statement concerning the violation of the "rules of social coexistence (*współżycie społeczne*) in a People's Republic" (Art. 3). In addition, civil law provisions were to be applied

> in accordance with the principles of the system and objectives of the People's State.[11]

With regard to the adoption of the Soviet model of ownership relations, the nationalization of industry had been taking place since the end of 1944. Initially, the state took over German-owned estates and the companies that had been under German control during the war.[12] As a legal basis for the action, the brief Decree of 16 December 1918 on compulsory state administration[13] was initially used. On 3 January 1946, the State National Council ("*Krajowa Rada Narodowa*," i.e. the interim parliament) passed a law on the takeover of the basic branches of the national economy by the state.[14] According to that act, all enterprises which were able to employ 50 employees per shift (Art. 3(1)) were subject to nationalization. Irrespective of the number of employees, the state took over mines and businesses in such industries as petroleum and natural gas, coke, electricity, the iron and steel industry, the arms

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8 Andrzej Stelmachowski & Kamil Zaradkiewicz, *Przekształcenia własności w Polsce* [*Transformation of Property in Poland*] in *System prawa prywatnego. T. 3: Prawo rzeczowe* [*System of Private Law. Vol. 3: Property Law*] 244–245 (E. Gniewek (ed.), 3rd ed., Warsaw: C.H. Beck, 2013).

9 Machnikowska 2010, at 76.

10 Act of 18 July 1950 – General provisions of the civil law (Journal of Laws, No. 34, item 311).

11 Anna Machnikowska, *Nowe prawo własności – przekształcenia w stosunkach własnościowych w Polsce w latach 1944–1950* [*New Ownership Right – Transformations in Ownership Relations in Poland 1944–1950*], 11(2) Zeszyty Prawnicze Uniwersytetu Kardynała Stefana Wyszyńskiego 257, 273–274 (2011).

12 The legal status was sanctioned in this respect by the Decree of 8 March 1946 on abandoned and post-German property (Journal of Laws, No. 13, item 87).

13 *Id.* No. 21, item 67.

14 *Id.* No. 3, item 17.

and aerospace industry, the production of sugar and alcohol, "big and medium-sized textile industry" and the printing industry (including printing houses). Formally the takeover of production facilities was supposed to be accompanied by compensation. In the early period of Communist rule, provisions concerning land in Warsaw were issued, which caused the majority of land to become the property of the city.[15]

In 1948, a process aimed at full nationalization of the means of production according to the Soviet standard was introduced. An eminent Polish lawyer, Andrzej Stelmachowski (1925–2009), distinguished the following types of nationalization: direct nationalization (this concerned, in addition to large and medium industry, pharmacies,[16] the inland waterway fleet and church property), factual nationalization of minor industry, factual capital nationalization, factual nationalization of income, and nationalization in the form of providing the state with an exclusivity for conducting a particular activity. With regard to the nationalization of minor industry, the provisions of the 1918 Decree were still used, and decisions on the acquisition of the company and compulsory management were issued by the relevant ministers. These decisions were announced in the official journal "Monitor Polski."[17] The takeover of capital assets took place through the introduction of provisions concerning monetary nominalism.[18] According to them, all claims were converted in such a way that one pre-war Polish zloty was equivalent to one Polish zloty from the year of repayment. In addition, as a means of enhancing the effectiveness of these provisions, a tax on extraordinary enrichment during the war was introduced.[19] The nationalization of income was the result of the takeover by the state, through the relevant tax, of most (85 percent) of the income from renting tenement houses which had remained private. In this period attempts were made to collectivize agriculture, imposing mandatory supplies and additional taxes on farmers who did not want to join the agricultural cooperatives. Formally, these cooperatives continued to operate on the basis of pre-war regulations from the 1920s; however, they were subordinated to local administrative bodies (district councils or *powiatowe rady narodowe*). The transactions concerning land formally owned by private farmers were actually limited by the application of legislation requiring consent for transactions issued by the competent administrative organs. In this situation, there were many

[15] Decree of 26 October 1945 on the ownership and use of land in the area of the capital city of Warsaw (Journal of Laws, No. 50, item 279). The legal implications of this Decree are significant even today.

[16] On the margin, it can be added that all pharmacies were nationalized under a separate act: the Law of 8 January 1951 on the acquisition of the ownership of pharmacies by the State (Journal of Laws, No. 1, item 1).

[17] Stelmachowski & Zaradkiewicz 2013, at 247.

[18] Decree of 27 July 1949 on acquiring new and determining the amount of unpaid monetary liabilities (Journal of Laws, No. 45, item 332). This legal act is still valid today.

[19] This tax was originally regulated in the Decree of 13 April 1945 on extraordinary war enrichment tax (Journal of Laws, No. 13, item 72). The rules governing this tax were changed several times.

informal transactions that were invalid from the legal point of view.[20] Moreover, on 20 March 1950 the Statute concerning the local organs of unified state authority was enacted.[21] Under its authority, local government in Poland ceased to exist and its assets were taken over by the state. In this way, the foundations of uniform state ownership were created in Communist Poland.

During this period, ideological pressure also increased. Anna Machnikowska wrote:

> Economic transformations had been given a clear, ideological message... the justification for the changes was presented by the dogmas of Soviet law and economics. Among them was the theory of property development and its improvement. According to its content, private ownership was definitively displaced by social ownership (agricultural cooperatives).[22]

2. Constitution of the Polish People's Republic of 1952

In the early 1950s, the Communist authorities were preparing to introduce Soviet property regulations into Polish legislation. An appropriate commission was appointed for this purpose, but it did not complete its work until 1952. However, the assumptions of the new codification indicated only the introduction of the division into social and individual ownership.[23] The details of the solution, however, were not provided.

The so-called Stalinist Constitution, passed on 22 July 1952, was of key importance for the implementation of the Soviet regulations of ownership.[24] Ownership issues were governed by Arts. 11 to 13 of this act. Article 11 contained a program norm concerning the promotion of a cooperative movement by the state. It was also pointed out that cooperative property, as a form of social ownership, benefited from special care and protection from the state. Article 12 contained a provision for guarantees of individual property and the right to inherit it. According to this provision, individual property included land, buildings and other means of production belonging to "peasants, craftsmen and cottagers." In turn, Art. 13 referred to personal property.

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20 Stelmachowski & Zaradkiewicz 2013, at 248–250.

21 Journal of Laws, No. 14, item 130.

22 Machnikowska 2010, at 87.

23 *See* Jan Wasilkowski, *Własność i inne prawa rzeczowe* [*Ownership and Other Property Rights*], 5–6 Państwo i Prawo 841 (1951).

24 Journal of Laws, No. 33, item 232. The term "Stalinist constitution" does not refer only to the period in which it originated. A copy of the draft constitution in Russian exists, in which Joseph Stalin introduced his own amendments.

It was argued in the literature that the Constitution of the People's Republic introduced an economic understanding of property. Therefore, in the legal doctrine of that period, it was considered that the Constitution contained a broader, economic concept of property, and civil law contained a narrower, legal approach towards property.[25] As for the comparison of the provisions of the Constitution of the Polish People's Republic and the Constitution of the USSR of 1936, the scholars emphasized the similarities, although at the same time there were differences: the Soviet Constitution favoured full nationalization of the means of production, while the Constitution of the People's Republic recognized the private ownership of part of the land.[26]

Against the background of the mentioned constitutional provisions, the types and forms of property were distinguished in the Polish legal doctrine of that period. Theoreticians argued that according to these provisions, social (socialist) property was to be the basic type of property in the economic system, while capitalist property was tolerated in the transitional phase; however, with the building of socialism it was to be liquidated. There was a view that these two types of property were in opposition to each other (this position was mitigated in literature after 1956). In turn, the division of ownership into forms consisted of: 1) social ownership, which was divided into state ("nationwide") and cooperative property; 2) smallholder property, i.e. the property of craftsmen and peasants protected by the Constitution (which used the term "individual property"); however, in the future this was going to disappear; 3) capitalist property, which was in decline and did not enjoy protection; 4) personal property personal property, only for the owner's private use (the means of private consumption). Personal ownership – as was believed – had a fairly wide range of subject matter and included, among others, single-family houses. The absence of ownership of social organizations was considered to be a certain weakness of the Constitution of 1952.[27] As far as cooperative ownership is concerned, Seweryn Szer has pointed out that from a civil law point of view it was the property of a legal person, i.e. a co-operative, but it did not blur its character as a group property.[28]

The process of replacing Polish legal doctrine with the views expressed in Soviet legal literature began in 1952. Then the work by Anatoly Venediktov (1887–1959) of

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[25] *See* Jan Wasilkowski, *Prawo rzeczowe w zarysie* [*Property Law in Outline*] 33–40 (Warsaw: Państwowe Wydawnictwo Naukowe 1957).

[26] Machnikowska 2010, at 91.

[27] *See* Stelmachowski & Zaradkiewicz 2013, at 251–252.

[28] *See* Seweryn Szer, *Własność spółdzielcza. Z wyjątkiem własności spółdzielni produkcyjnych w rolnictwie* [*Cooperative Ownership, with the Exception of Property of the Agricultural Production Cooperatives*] 49–53 (Warsaw: Państwowe Wydawnictwo Naukowe, 1960). (Szer's work was published after 1956 and takes account of changes in the cooperative movement that took place after that year (it denigrates the "degeneration" in the cooperative movement during the Stalinist period), although it is written from a Marxist point of view.)

1948, which was of key importance for Soviet theory of property, was translated.[29] The two-volume book edited by Dmitry Genkin (1884–1966) was also published; the issues of ownership in the USSR were described by the editor himself.[30] Among Polish lawyers, Jan Wasilkowski (1898–1977) was a leading author who introduced concepts developed on the basis of Soviet law to Polish legal literature and (being a member of many expert committees) to the legislation. From the 1950s to the 1970s he published numerous works on property law, and on ownership in particular. He praised Venediktov, who in his opinion proposed a well-grounded general definition of property, understating property as the appropriation of natural resources by the individual (according to Marxist theory, it took place in different ways in particular formations), and as the "social relationship of production," which is a relationship between persons but "against the background of means of production."[31]

Yet in the period of Stalinism, in 1954, a project of new civil code, developing the constitutional provisions of 1952, was published.[32] Thus, it contained such elements as: the principle of uniformity of state ownership, an inhomogeneous notion of ownership, the special protection of social property and the special legal capacity of state enterprises. Despite political pressure, work on the code was delayed, and detailed property regulations were met with the critique of prominent lawyers: Stefan Grzybowski (1902–2003) and Stefan Ritterman (1904–1970).[33]

In October 1956, a somewhat delayed "thaw" took place in the Polish People's Republic, which also led to changes within ownership relations. The authorities allowed the dissolution of agricultural cooperatives, resulting in the liquidation of almost 80% of the cooperatives (about 8,000), and the division of their assets among their members.[34] In this way, an attempt to collectivize agriculture in Poland had finished. On 13 July 1957, the Agricultural Property Act[35] was passed, which liberalized the terms of sale of land. It introduced the upper limits of the area of the farm that could be the subject of a transaction. It was possible to purchase a farm of up to 15 hectares, and in the case of breeding farms, up to 20 hectares.[36] Cooperative

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[29] Anatolij V. Venediktov, *Państwowa własność socjalistyczna* [*State Socialist Ownership*] (J. Wiszniewski (ed.), Warsaw: Wydawnictwo Prawnicze, 1952).

[30] *See Radzieckie prawo cywilne. T. I* [*Soviet Civil Law. Vol. I*] 232–304 (D.M. Genkin (ed.), Warsaw: Wydawnictwo Prawnicze, 1955).

[31] Venediktov 1952, at 18, 37.

[32] *See Projekt kodeksu cywilnego PRL* [*The Project of Civil Code of the Polish People's Republic*] (Warsaw: Wydawnictwo Prawnicze 1954).

[33] Machnikowska 2010, at 95–96. (In 1955, a new project, close to the previous, was published.)

[34] Stelmachowski & Zaradkiewicz 2013, at 252.

[35] Journal of Laws, No. 39, item 172.

[36] These provisions were detailed (and to some extent changed) by the Act of 29 June 1963 on limiting the division of agricultural holdings (Journal of Laws, No. 28, item 168). It introduced, among others, the rules of inheritance of farms, which were binding until the beginning of the 21st century. *See* Stelmachowski & Zaradkiewicz 2013, at 254–255.

property was regulated by the Act of 17 February 1961 on cooperatives and their unions.[37] It introduced a certain autonomy for the cooperative movement in relation to the state, and also regulated the right to housing in a housing cooperative (a new property law was introduced, featuring the cooperative ownership right to premises, which exists in the Polish legal system to this day).

3. The Civil Code of 1964

Property regulations, corresponding to the Soviet model, were finally included in the provisions of the Civil Code of 1964. Article 126 distinguished three categories of social property, i.e. state property ("nationwide" property; in such a way this form of property was also named by Venediktov), cooperative property, and the property of social organizations (the latter was not mentioned in the Constitution of the People's Republic of Poland). Article 129 stated that social property, which was the foundation of state system, benefited from special legal protection. This special protection was manifested in the regulations which, in the case of state property, excluded the protection of purchasers in good faith (Art. 171), indicated that the debt collection claims of state entities vis-à-vis individuals and corporations outside the so-called socialized sector were not time-limited (Art. 223, para. 2), and public property could not be acquired by usucaption (Art. 177). It is also important that Art. 128 of the Code consistently implemented the principle of a unified state ownership fund. State legal entities exercised only the rights resulting from the property right in relation to the assets of the state that were under their management (Art. 128, para. 2).[38] This provision was the fulfillment of long-standing postulates of lawyers associated with the communist regime.[39] As Andrzej Stelmachowski emphasized, as a result of this principle,

> superior units could always interfere in the ownership relations of subordinate units. Fixed asset management was limited and dependent on superior units that could not only create and liquidate subordinate units, reorganize, e.g. by

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[37] Journal of Laws, No. 12, item 61.

[38] In the Soviet Union, Andrey Vyszinsky presented the thesis of the validity of this principle in 1938. *See* Andrey Vyszinsky, *Zagadnienia teorii państwa i prawa* [*Issues of the Theory of State and Law*] 142–144 (Warsaw: Książka i Wiedza, 1952). Venediktov justified it theoretically in the aforementioned work published 10 years later. In turn, its regulation was included in the Civil Code of the USSR, dated 8 December 1961, and in the Civil Code of the Russian Soviet Federative Socialist Republic of 1964. As Adam Lityński points out, this principle can be interpreted as a return to the nineteenth-century view that *fiscus* was the owner of all state property, and state entities exercised the power over that property as *stationes fisci* (though they were also allowed to be given their own property). *See* Lityński 2012, at 225–226.

[39] *See, e.g.*, Seweryn Szer, *Prawo cywilne. Część ogólna* [*Civil Law. General Part*] 118–121 (Warsaw: Wydawnictwo Prawnicze, 1955). The lawyer wrote on this subject: "Undoubtedly, Soviet practice should be here the precept *de lege ferenda* for us". *Id.* at 119.

> moving individual plants from one enterprise to another... In fact, state legal entities behaved like owners only in reference to third parties.[40]

It is worth noting that during the period of the Polish People's Republic, the scholar argued with the idea of unity of state property, which had been justified especially by Jan Wasilkowski. He also was of the opinion that the privileges of social property undermined the principle of equality of parties, being a fundamental principle of civil law.[41]

4. The Period of Decline

In the 1970s, when Edward Gierek was the first secretary of the United Workers' Work Party (the so-called Gierek era), the corset of rules restraining individual farming was loosened. In 1971, the system of mandatory deliveries of agricultural products ceased to be in effect, and the provisions of the Act of 26 October 1971 regulating the ownership of agricultural holdings[42] allowed the legalization of the factual states that were the result of the so-called informal land trading (i.e. agreements which were not concluded in the required form of a notarial act). However, in the mid-1970s there was a return to the promotion of "socialized" agriculture by the authorities, this time in the form of "state agricultural farms" (the equivalent of "*sovkhozy*" in the USSR). This policy, however, collapsed at the end of this decade.[43] Therefore, individual farms have remained the basis of agriculture in Poland. Indeed, after protests by workers and farmers in 1980, this state of affairs was reflected in the legislation. First, in 1982, Art. 131 of the Civil Code was changed,[44] providing protection for individual farms. Certainly, this change disrupted the structure of the Code of the time, which provided for a privileged position for social ownership. Then, in 1983, the Constitution of the People's Republic was amended, introducing in Art. 15, point 3, the principle of state protection of family farms and their stability.[45]

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40 Stelmachowski & Zaradkiewicz 2013, at 257.

41 Andrzej Stelmachowski, *Wstęp do teorii prawa cywilnego* [*Introduction to the Theory of Civil Law*] 301 (2nd ed., Warsaw: Państwowe Wydawnictwo Naukowe, 1984). *See also* apologetic comments on the principle of unity of state property: Jan Wasilkowski, *Pojęcie własności we współczesnym prawie polskim* [*Concept of Ownership in Contemporary Polish Law*] 99–118 (Warsaw: Książka i Wiedza, 1972); Jan Wasilkowski & Marek Madey, *Prawo własności w PRL. Zarys wykładu* [*Ownership in the People's Republic of Poland. Outline of the Lecture*] 28–40, 113–128 (Warsaw: Państwowe Wydawnictwo Naukowe, 1969).

42 Journal of Laws, No. 27, item 250.

43 *See* Stelmachowski & Zaradkiewicz 2013, at 258–259.

44 Act of 26 March 1982 amending the Civil Code and repealing the Law on the regulation of ownership of agricultural holdings (Journal of Laws, No. 11, item 81).

45 Act of 20 July 1983 amending the Constitution of the Polish People's Republic (Journal of Laws, No. 39, item 175).

After workers' protests in August 1980, two legal acts which were of crucial importance for the functioning of state-owned enterprises were adopted. The first gave the self-governing structures of work crews some input into the management of these enterprises,[46] and the second stated that the management of these companies should be based on the principles of self-management, self-reliance and self-financing.[47] These legal regulations did not invalidate the principle of unity of the state property fund, but made a significant breakthrough in modifying the management of it.

At the end of the existence of the Polish People's Republic, changes were also visible in the legal literature. In 1984, Walerian Pańko (1941–1991)[48] in his very erudite and authoritative book "On the Property Right and Its Contemporary Functions"[49] devoted a chapter to the issue of the socialization of property. It must be noted that the chapter title is already significant, because it uses the term "socialization of property" and not "socialized property."[50] The author wrote about giving property to local administration units (municipalities); he also discussed the self-government of employees in state-owned enterprises, thus referring to the creation of the Solidarity movement during the workers' protests of 1980. He stated that

> the socialization of property can only happen with socialization of the whole organization of society, and therefore – the socialization of the state itself.[51]

This was a clear allusion to events in Poland in 1980–1981. Several remarks made by Pańko in his book reveal that the author tried to fill the notions of socialist property law which was still in force with quite different content. In the 1980s Pańko was among the scholars who prepared the ground for further changes in Polish property law.

The departure from the Soviet property regulations took place in 1988–1989, so even before the so-called Round Table talks and partially free elections of June

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[46] Act of 25 September 1981 on the self-government of the crew of a state-owned enterprise (Journal of Laws, No 24, item 123).

[47] Act of 25 September 1981 on state-owned enterprises (Journal of Laws, No. 24, item 122).

[48] Pańko was a disciple of Andrzej Stelmachowski and a professor at the Silesian University in Katowice. After the changes in the political system, in 1991 he was the president of the Supreme Chamber of Control. However, shortly thereafter, he died in a car accident.

[49] This work includes, e.g., interesting remarks about the present the phenomenon of dematerialization of property (in the Western countries occurring since the end of the 19th century). *See* Walerian Pańko, *O prawie własności i jego współczesnych funkcjach* [*On the Property Right and Its Contemporary Functions*] 58–63 (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 1984).

[50] *See Id.* at 177–197.

[51] *Id.* at 196.

1989. The Sejm adopted the groundbreaking Act of 23 December 1988 on economic activity,[52] thus giving great freedom for the pursuit of individual business. Moreover, on 31 January 1989, Art. 128 of the Civil Code was changed[53] entailing the abandonment of the principle of the unified state ownership fund.[54] On 29 December 1989, a very substantial amendment of the Constitution of the Polish People's Republic took place.[55] It abolished the provisions on social property and introduced the general principle of protection of all property and the right of inheritance in Art. 7. It should be noted that the amendment of the Civil Code of 28 July 1990 repealed the provisions on various forms of ownership.[56]

Postlude

Using the example of legal regulations concerning the easing of transmission and legal disputes around it, I will show, below, how the jurisprudence of contemporary Polish courts has approached the legal design of ownership from the period of Polish People's Republic. In 2008, the new Art. 305.1 was added to the Civil Code.[57] It includes the following content:

> Real estate may be encumbered with a right in favour of an entrepreneur who intends to construct or which owns the facilities referred to in Art. 49, para. 1 ("transmission equipment for supplying or discharging liquids, steam, gas, electricity and similar facilities") under which the entrepreneur may use the servient estate within a designated scope, in accordance with the purpose of the facilities (easing of transmission).[58]

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52 Journal of Laws, No. 41, item 324.

53 Journal of Laws, No. 3, item 11.

54 Ultimately, the state legal entities – including state-owned enterprises – received ownership of the property they had been managing under the Act of 29 September 1990 on amendments to the Land Management Act and the expropriation of real estate (Journal of Laws, No. 79, item 464). However, the restored local government units (municipalities) acquired the "nationwide" property, which until that moment had been in the management of municipal councils, under the Act of 10 May 1990 – provisions introducing the law on territorial self-government and the law on self-government employees (Journal of Laws, No. 32, item 191). *See* Piotr Dubowski, *Mienie przedsiębiorstwa państwowego* [*Estate of a State-Owned Enterprise*], 10(2) Rejent 47 (1992).

55 Journal of Laws, No. 75, item 444.

56 Act of 28 July 1990 amending the Civil Code (Journal of Laws, No. 55, item 321).

57 Act of 30 May 2008 amending the Civil Code and certain other acts (Journal of Laws, No. 116, item 731).

58 The Civil Code of 23 April 1964 (Oct. 10, 2017), available at https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf. Maybe the term "easement of transfer" would be even better term in English.

The aim of the amendment was to clarify the legal status in such a way as to allow transmission enterprises to conclude agreements establishing an easement with the landowners on whose premises the mentioned equipment is located. It should be noted here that many of these enterprises are successors to former state-owned enterprises. The lawyers of these companies, in the numerous processes concerning the compulsory establishment of the easement of transmission, began to use the concept of the usucaption of this easement, while the condition of the usucaption is to exercise that easement for 20 years in the case of good faith, and during 30 years in the case of bad faith. In case of such usucaption, there is no need to conclude an agreement with the landowner and pay the salaries. Despite critical voices in the literature,[59] the courts began to accept this argument. Over time, there has been a legal problem: whether the 20-year or 30-year period necessary to obtain an usucaption includes the exercise of the easement by the state-owned enterprises which – we must emphasize – were only managers of state assets until 1990. However, more recent case-law has begun to allow such an opportunity, and the Supreme Court stated in a judgment in 2013 stated that

> a state legal person... in external relations with third parties had such a position as an owner.[60]

In this way, the Supreme Court undermines the very legal structure of the single state property fund, retrospectively, in relation to the legal relations that took place before 1989 (obviously, in this case, such an interpretation is in the interest of transmission companies).

The example presented here shows the attitude of Polish courts to civil-law legal institutions from the period before the political transformation. After 1989–1990 these institutions were often considered as an obstacle to the process of the introduction of a capitalist, market economy. To give at least two examples of this attitude, I would like to point out that the general clause of the principles of social coexistence has been retained in Art. 5 of the Civil Code; however it has become an almost defunct principle, devoid of almost all practical importance. In turn, the principle of material truth was largely restricted in the Polish Code of Civil Procedure due to amendments in 1996 and 2004. It has been emphasized by many legal scholars that this principle

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[59] *See* Grzegorz Matusik, *Własność urządzeń przesyłowych a prawo do gruntu* [*Ownership of Transmission Facilities and the Right to Land*] 375–380, 393–395 (2nd ed., Warsaw: LexisNexis, 2013); Kamil Zaradkiewicz, *Komentarz do art. 305[1]* [*Commentary to the Article 305[1]*] in *Kodeks cywilny. Komentarz. T. I: Art. 1–449[10]* [*Civil Code. Commentary. Vol. I: Articles 1–449[10]*] 931–932 (K. Pietrzykowski (ed.), 8th ed., Warsaw: C.H. Beck, 2015); Edward Gniewek, *Komentarz do art. 305[1]* [*Commentary to the Article 305[1]*] in Kodeks cywilny. Komentarz [*Civil Code. Commentary*] 550–552 (E. Gniewek & P. Machnikowski (eds.), 7th ed., Warsaw: C.H. Beck, 2016).

[60] Judgment of the Supreme Court of 10 May 2013, signature: I CSK 495/12 (Oct. 10, 2017), available at http://www.orzeczenia.com.pl/orzeczenie/lonlo/sn,I-CSK-495-12,wyrok_sn_izba_cywilna_i/4/.

was a relic of communist law and the principle of formal (judicial) truth is better suited to the conditions of a market economy.[61] In this context, the approach of the courts towards the notion of social property is not surprising. It is surprising, however, that Polish courts have questioned the legal meaning of the notion of the single state property fund even in relation to the period before 1989.

References

Bużowicz M. *Ewolucja prawa własności w Polsce Ludowej w latach 1944–1956* [*The Evolution of Property Rights in the Polish People's Republic 1944–1956*], 10 Wrocławskie Studia Erazmiańskie. Studia Erasmiana Wratislaviensia 485 (2016).

Dubowski P. *Mienie przedsiębiorstwa państwowego* [*Estate of a State-Owned Enterprise*], 10(2) Rejent 47 (1992).

Gniewek E. *Komentarz do art. 305[1]* [*Commentary to the Article 305[1]*] in Kodeks cywilny. Komentarz [*Civil Code. Commentary*] (E. Gniewek & P. Machnikowski (eds.), 7th ed., Warsaw: C.H. Beck, 2016).

Lityński A. *Prawo Rosji i ZSRR 1917–1991, czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs* [*The Law of Russia and the USSR 1917–1991: The History of the All-Union Communist Law (of Bolsheviks). Short Course*] (2nd ed., Warsaw: C.H. Beck, 2012).

Machnikowska A. *Prawo własności w Polsce w latach 1944–1981. Studium historycznoprawne* [*Property Law in Poland 1944–1981. Historico-Legal Study*] (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2010).

Matusik G. *Własność urządzeń przesyłowych a prawo do gruntu* [*Ownership of Transmission Facilities and the Right to Land*] (2nd ed., Warsaw: LexisNexis, 2013).

Pańko W. *O prawie własności i jego współczesnych funkcjach* [*On the Property Right and Its Contemporary Functions*] (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 1984).

Sayers S. *Marx and Alienation: Essays on Hegelian Themes* (Basingstoke; New York: Palgrave Macmillan, 2011).

Stelmachowski A. & Zaradkiewicz K. *Przekształcenia własności w Polsce* [*Transformation of Property in Poland*] in *System prawa prywatnego. T. 3: Prawo rzeczowe* [*System of Private Law. Vol. 3: Property Law*] (E. Gniewek (ed.), 3rd ed., Warsaw: C.H. Beck, 2013).

Stelmachowski A. *Kształtowanie się ustroju rolnego w Polsce Ludowej* [*Formation of the Agricultural System in People's Poland*] in Kuta T. et al. *Prawo rolne* [*Agricultural Law*] 73 (Wrocław: Uniwersytet Wrocławski, 1966).

Stelmachowski A. *Wstęp do teorii prawa cywilnego* [*Introduction to the Theory of Civil Law*] (2nd ed., Warsaw: Państwowe Wydawnictwo Naukowe, 1984).

[61] Krzysztof Knoppek, *Zmierzch zasady prawdy obiektywnej w procesie cywilnym* [*The Twilight of the Principle of Objective Truth in Civil Procedure*], 1–2 Palestra 9 (2005).

Szer S. *Prawo cywilne. Część ogólna* [*Civil Law. General Part*] (Warsaw: Wydawnictwo Prawnicze, 1955).

Wasilkowski J. *Pojęcie własności we współczesnym prawie polskim* [*Concept of Ownership in Contemporary Polish Law*] (Warsaw: Książka i Wiedza, 1972).

Wasilkowski J. *Własność i inne prawa rzeczowe* [*Ownership and Other Property Rights*], 5–6 Państwo i Prawo 841 (1951).

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