

*The system of public registers  
in the Kingdom of Prussia and its impact  
on the development of public registers in Poland  
in the 20th and 21st centuries*



Hadrian Ciechanowski

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WYDAWNICTWO NAUKOWE  
UNIwersytetu  
MIKOŁAJA KOPERNIKA

Toruń 2023

The publication has been peer-reviewed

Funding: National Science Centre, Poland, grant number 2019/32/C/HS3/00121

Editor

*Anna Mądry*

Typesetting and cover design

*Andrzej Kaczmarek*

Cover graphics source: Wikimedia Commons

ISBN 978-83-231-5033-6

eISBN 978-83-231-5034-3

DOI <https://doi.org/10.12775/978-83-231-5034-3>

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Toruń 2023

NICOLAUS COPERNICUS UNIVERSITY PRESS

Editorial office: ul. Gagarina 5, 87-100 Toruń

tel. 56 611 42 95, fax 56 611 47 05

e-mail: [wydawnictwo@umk.pl](mailto:wydawnictwo@umk.pl)

[www.wydawnictwo.umk.pl](http://www.wydawnictwo.umk.pl)

Distribution: ul. Mickiewicza 2/4, 87-100 Toruń

tel. 56 611 42 38

e-mail: [books@umk.pl](mailto:books@umk.pl)

Printed by the printing house of Nicolaus Copernicus University Press

*For Ela and Franciszek,  
who came into the world while this book was being written*



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## *Introduction*

Since ancient times humanity has felt the need to record and register specific facts. This was particularly true in the case of property rights and encumbrances on real estate.<sup>1</sup> As one could not trust all these facts to human memory alone in expanding communities, various types of registers were created over time to record the necessary information. Although the exact origin of many registers remains debatable,<sup>2</sup> there is no doubt that as time passed and relations between people developed and the law describing them became more complicated, new public registers were created and developed. Therefore, this issue of public registers is not new because its origins date back at least to ancient Babylon.<sup>3</sup>

Due to such an old pedigree, the question of public registers has already been discussed on many occasions in legal and historical literature. However, the literature so far (not only in Poland) has focused mainly on the problems associated with individual public registers or on their general theory. However, not all registers have been developed equally. Most of the existing studies concern the marital status registry, cadastre and land registers, as well as commercial and cooperative registers. Smaller registers, with specific purposes, have received relatively little attention. Regarding ancient registers, it is worth mentioning publications such as *Ancient Land Law: Mesopotamia, Egypt, Israel* by Robert C. Ellickson and Charles DiA Thorland (Chicago-Kent Law Review, Vol. 71, Issue 1, 1995) and *Archiwa w państwach starożytnych* by Mieczysław Rokosz (Archeion, Issue 53, 1970). Among the more recent literature treating comparative law

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<sup>1</sup> B. Barłowski, E. Janeczko, *Księgi wieczyste – rejestr nieruchomości*, Warszawa 1988, p. 5.

<sup>2</sup> M. Weber, *Gospodarka i społeczeństwo, zarys socjologii rozumiejącej*, Warszawa 2002, p. 1017.

<sup>3</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, Katowice 2009, pp. 239–240.

issues taking into account the problem of German registers, one can mention the works: *Rejestry nieruchomości. Studium prawnoporównawcze* by Paweł Blajer (Warszawa 2018) or *Rejestry publiczne. Funkcje instytucji* by Tomasz Stawecki (Warszawa 2005). However, it should be noted that recent works focus primarily on the current state of public registers, treating the question of their origin as a side issue.

In the previous studies, the problem of the relationship between the various registers was not addressed at all. If it was done, it concerned practically only the issue of mutual complementarity of land and mortgage registers and cadastre. However, such considerations were carried out mainly when discussing one of these registers, not concentrating on the relations between them. Thus, the main emphasis was put on legal issues rather than on problems related to the collected information and its circulation.

It should be emphasised that the legal problems relating to registers have been raised many times. In principle, such considerations were taken up each time a new legal state was introduced. Subsequent discussions, however, focused mainly on commenting on new solutions or indicating differences between the new and old legal states. In the first place, this approach gave them a practical character, as compendia of knowledge for officials and lawyers, leaving little room for considerations of a more general nature.

The question of the systematic nature of the registers thus remained outside the mainstream of previous considerations. In Polish literature, this aspect is mainly highlighted by Agnieszka Gryszczyńska in her work *Rejestry publiczne. Jawność i interoperacyjność* (Warszawa 2016). However, the problems she raises concern only modern registers maintained primarily through ICT systems. This approach certainly seemed sufficient from a legal as well as a historical point of view, at least as long as access to records, whether still in existence or already constituting archives, remained basically restricted to researchers and administrative staff only. Nowadays, however, when access to the archives is much more open and hundreds of users per year are searching for historical information, it seems necessary to also consider the issue of the relationship between the various registers. For this reason, this paper is addressed primarily to the historical community and all those involved with archives and archival records. The author hopes, however, that it will also be useful to representatives of other social sciences and humanities who will be able to find in one place basic knowledge about Prussian public registers, the circulation of information between them and their significance for contemporary solutions.

It should be emphasised that Poland constitutes a special case when discussing problems of law development in the 20th century. This is due to an extremely troublesome legacy of the partition era, namely the fact that the law was divided into districts, which persisted throughout the entire inter-war period. In the first period of existence of reborn Poland, in some areas of the state's functioning, one could find as many as five different legal systems in force simultaneously. This problem was not solved before the outbreak of the Second World War, despite the appointment of the Codification Commission in 1919, whose mission was to prepare drafts of uniform legislation for all the lands constituting the State. It is worth noting that the Codification Commission acted both in the field of civil and criminal law.<sup>4</sup>

Looking at the area of public registration, it seems that both the Codification Commission and the post-war authorities were particularly keen to draw on the legal solutions in force on the territory of the former Prussian partition. Thus, these were legal solutions in force both in the Kingdom of Prussia and often more broadly along the entire German Empire. This State, thanks to the creation of a modern, efficient bureaucratic machine and an absolutist approach to the question of the state's influence on its citizens,<sup>5</sup> had not only the need but also the opportunity to record many facts that were important for relations between citizens and between the State and citizens. Indeed, these factors might have been decisive for the development in Prussia of a particularly efficient and modern system of public registers.

It is this noticeable influence of the solutions applied in Prussia on the Polish legislation (especially after the Second World War) that led to the creation of this monograph. Its first and primary objective is to present the Prussian registers as a system. The other aim is to trace the influence of the German models on the development of public registers in Poland and their present shape. Taking up this topic seems all the more justified because of the increasing openness of archives, giving a wide range of users, including genealogists to a large extent, the possibility of researching the past not only with the help of traditionally used sources but also with the help of registers which can constitute excellent supplementary material in many types of research undertaken by historians and representatives of history auxiliary sciences, both professional and amateur.

In order to fully meet this objective, the system analysis method was adopted as the basis for the study, which aims to present the individual elements of the

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<sup>4</sup> K. Sójka-Zielińska, *Historia prawa*, Warszawa 2003, pp. 247–248.

<sup>5</sup> S. Salmonowicz, *Prusy. Dzieje państwa i społeczeństwa*, Warszawa 1998, pp. 377–378.

system and the links between them. This method also takes into account the fact that some elements of a higher-level system may constitute a system in themselves. This method has been characterised in the scientific literature on many occasions,<sup>6</sup> so it is not necessary to present it in detail here.

The whole study was based on three pillars: analysis of literature (Polish and German), analysis of legal acts (Polish, German and Prussian) and archival research conducted in different areas of the Prussian Kingdom, including Brandenburg.

As the aim of the book is to show the connections between the Prussian and Polish registers, the analysis focused mainly on the legal state, which was taken over by the Second Republic. The discussion does not, therefore, include a detailed presentation of all provisions and their changes concerning public registers in the Kingdom of Prussia. Chronologically, these are primarily legal solutions that were introduced in the second half of the 19th century. Older laws will be discussed only insofar as this is important for the lecture.

The application of the system analysis method is reflected in the layout used in the work. Chapter 1 presents the problem of public registers in a general way, taking into account both their theory and the history of public registers until the end of the 19th century.

The first part of the monograph presents public registers of an administrative nature identified in Prussian law. These registers are: the registers of marital status (Chapter 2), the cadastre (Chapter 3) and the registers kept by the Patent Office in Berlin – the register of utility models, the patent register and the trademark register (Chapter 4).

The second part, on the other hand, presents the registers kept by the courts. Somewhat contrary to Prussian doctrine, but in line with contemporary views, the first chapter of this part (Chapter 5) presents the land registers (the equivalent of today's land registers). This is followed by a description of the commercial register and its derivatives, i.e. the register of cooperatives, associations and water cooperatives (Chapter 6). Next, the registers for sea-going and inland waterway vessels are presented (Chapter 7). The last chapter of this section describes other smaller registers, i.e. the register of designs, the register of matrimonial property rights and the stock exchange register (Chapter 8).

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<sup>6</sup> For example: W. Pogorzelski, *Teoria systemów i metody optymalizacji*, Warszawa 1996; W. Karsz, *Cybernetyczne aspekty funkcjonowania systemu rad narodowych*, Łódź 1979; B. Ryszewski, *Problemy i metody badawcze archiwistyki*, Toruń 1985.

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The last part of the monograph, on the other hand, is dedicated to the presentation of the relationship between the different public registers (Chapter 9) and their impact on public registers in Poland (Chapter 10).

The monograph was written as a result of the National Science Centre, Poland, grant number 2019/32/C/HS3/00121.



## CHAPTER 1

# *Public registers*

The first chapter will define a public register and its basic functions. The chapter will also deal with the history of the development of public registers in Europe until the end of the 19th century. The presentation of both issues is necessary to structure the subsequent lecture, which will be strongly based on the findings presented in the first, somewhat introductory, chapter.

### *1.1 Public registers – definition, typology, functions*

Throughout history, a register (*regester*, *registre* or *regiestre*) was usually called a list, index or inventory of people or things. Samuel Bogumił Linde, for example, explained that a register is “a list of various things, in order to remember, find and recall them more easily”.<sup>1</sup> However, the concept of a register also pertained to the application of law and the operation of public offices, especially courts. Registers were also various types of lists, inventories or repertories of documents drafted or received in chancelleries, offices, etc. When using specific terminology, an important factor was also the technique of collecting information, due to which data sets kept for the purposes of judicial, administrative or fiscal practice were often called books. Such books were known and kept as early as in the Middle Ages. In Poland, these were e.g. town council books and municipal court books, which were used to record legal facts important to the inhabitants, such as the composition of elected authorities, adopted resolutions of town councils or court judgements. In the Old Polish era, the terms book and register were not synonymous. On the contrary, one can even talk about the inferiority of

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<sup>1</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005, p. 20.

a register to a book. Both terms used to denote certain types of documents and sometimes also legal institutions, with the register rather being a part or unit contained in a book. It was court registers, such as the abovementioned town and land registers, which had a great influence on the contemporary meaning of the term public register.<sup>2</sup>

In Polish legislation, however, it has become common practice to distinguish between a register and a record. This distinction is based on the extent of control that the entity keeping such records has over information or documents submitted by persons or institutions entitled or obliged to do so. When the body that maintains the information file controls the content of the documents or information submitted, so that it can require certain amendments to be made to them, or can itself make interpretations, or when it can refuse to publicly disclose information or a document because of its content, such an institution is usually called a register. A record, on the other hand, is referred to when the role of authority is to take note of information or documents and publicly disclose their contents. It is also commonly interpreted that a register is said to exist when a certain register or book is recognised by law as serving to record facts or documents with a specific legal effect of that recording.<sup>3</sup>

After Tomasz Stawecki, it may be assumed that a public register is such a file of information on persons, things or rights, which meets the following conditions:

1. it is established under the applicable law,
2. it is operated by a registration authority of a public nature,
3. the receipt, recording and subsequent disclosure of certain information is, in principle, the result of a decision of the registration authority,
4. the keeping of the register and the disclosure of certain information in it produces legal effects,
5. it is public.<sup>4</sup>

Similar features of public books were pointed out by Małgorzata Wrzosek-Romańczuk, according to whom their main features are the following:

1. keeping of books by a public agent (state civil law notary office, district court, state administrative body),
2. formal openness whereby the public ledger is accessible to the public,

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<sup>2</sup> Ibidem, pp. 20–21.

<sup>3</sup> Ibidem, pp. 22–23.

<sup>4</sup> Ibidem, pp. 28–30.



3. legal effects specified by law are connected with entries in public registers (this feature does not apply to purely record-filing registers).<sup>5</sup>

Public registers thus serve first and foremost to provide reliable, most credible information. An entity with such knowledge is able to make the right decisions and assess the risk of entering into a specific contract, acquiring a thing or assuming a right.<sup>6</sup>

The purpose of public registers is related to their functions, which may include: record-filing, information, alert, protection, control, law-making, selection and taxation.<sup>7</sup>

The record-filing function is sometimes also referred to as the registration-entry function or the registration-documentation function. This function arises from the fact that it is the task of the registry authority to collect certain information and record it by making appropriate entries in the register books and by preserving documents. In relation to this function, it is assumed that the primary purpose of the register is to maintain a complete and reliably ordered collection of information of a particular kind. For some registers, the principle of completeness is adopted (that is, all data to be registered must be recorded and consequently disclosed, and only those data which have been recorded and disclosed produce legal effects). However, there are also registers which do not assume completeness of the set of information. Currently, such a situation occurs for instance in relation to land and mortgage registers, because Polish legislation has not adopted the principle of their universality. The record-filing function may also consist in the registry assigning identification numbers or symbols, which are then used in other areas of life, including other registers. Examples include identification numbers commonly assigned in Poland: PESEL, REGON and NIP.<sup>8</sup>

The informative (disclosing) function of the register is implemented in the fact that thanks to the register the information is available about persons, their rights or things, their legal status, and to some extent also the factual one in a specific area may be determined. The information function of the register is a consequence of the principle of openness, and in particular of the formal

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<sup>5</sup> M. Wrzolek-Romańczuk, *Rejestr spółdzielni. Zagadnienia materialnoprawne i procesowe*, Warszawa 1986, p. 17.

<sup>6</sup> T. Stawecki, op. cit., p. 248.

<sup>7</sup> Ibidem, p. 34.

<sup>8</sup> Ibidem, pp. 34–35.

openness of the register, the weakening of which will entail the weakening of the information function of the register.<sup>9</sup>

Formal openness is the most characteristic feature of public registers. If any records are to be called public, they must be accessible to all concerned parties. Otherwise, they would only be lists intended for official use. Formal openness can take three forms:

1. Ordinary formal openness – a register is available for personal inspection by all the concerned parties, but its contents are not announced in the journals;
2. Extended formal openness, whereby a register is available for personal inspection by all concerned parties; moreover, its contents are publicly announced;
3. Restricted formal openness, as in the case of the French commercial register and similar registers.<sup>10</sup> This aspect, however, will not be relevant for the considerations undertaken in this work, and therefore this type of formal openness will not be discussed further here.

Importantly, the actual accessibility of registers also depends on the performance of duties imposed by legal standards by the registration authority. The legal provisions tend to commit the registration authority to issue copies or extracts from the register books, to make files or register documents available, and sometimes to publish the data entered in the register or otherwise provide information on the contents of the register.<sup>11</sup>

The alert function of the register, on the other hand, is that the role of some registers is to warn third parties of the consequences of certain facts that have occurred, such as the creation of debt of which the creditor has special rights in the event of enforcement or bankruptcy. Given the need to prevent certain acts from having undesirable consequences, the register does not have to be kept with the greatest possible care and accuracy. What is crucial, however, is the timeliness of entries and the speed with which the registering authority discloses information about changing realities. As regards the alert function, a special role is also played by the so-called notices, which signal a certain important legal fact, e.g. receipt of a request for entry. The role of notice is therefore to encourage caution in performing actions and possible further examination of circumstances relevant to the case.<sup>12</sup>

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<sup>9</sup> Ibidem, pp. 36–37.

<sup>10</sup> Z. Żabiński, *Rejestr handlowy*, Kraków 1946, p. 71.

<sup>11</sup> T. Stawecki, op. cit., pp. 36–37.

<sup>12</sup> A. Gryszczyńska, *Rejestry publiczne. Jawność i interoperacyjność*, Warszawa 2016, pp. 19–20.

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Public registers also have a protective function. Data that are registered and disclosed to the public, with the certainty that they have been checked by the registration authority, allow specific users to have the confidence that when they refer to the information contained therein they are referring to it as being true or having legal effect. This protects societal values that are considered important and require state intervention. For instance, the disclosure of information on traders or the legal status of immovable property serves as overriding security of trade by protecting persons acting in good faith and trust in the register.<sup>13</sup>

The control function is one of the most important functions of public registers. For business registers, this function allows the registration authority to verify whether an entity (e.g. a legal person or a partnership) has been established in accordance with the law or whether it has taken up or properly carries out a certain type of activity. For subject registers, on the other hand, the control of the registration authority consists in checking whether the performance of a legal act is legal and whether it is performed in fact, i.e. whether all the requirements for its performance are met. The consequence of the control function is the right of the registration authorities to discipline certain persons or groups of persons to perform the duties imposed on them by the law. The control function is sometimes combined with the disciplinary and protective function of the registration authority. It manifests itself in the fact that e.g. the court keeping the commercial register issues, in certain situations, consent to the sale of shares, it may appoint an entity authorised to audit financial statements in order to examine the accounts and operations of the company, and it may also appoint its fee.<sup>14</sup>

The law-making function of the register lies in the fact that the entry of a certain subject or object in the register is a condition for the effectiveness of certain legal facts. Making an entry results, for example, in the establishment of a legal person. Similarly, in the case of a contractual mortgage or a registered pledge, an entry is constitutive in nature. In other words, until an entry is made, a creditor is not entitled to a mortgage or a registered pledge, even if relevant agreements have been concluded, declarations and motions made, and the intention of the parties was unambiguous. Past practice and doctrine imply that the law-making function is much more often performed by court registers than by administrative registers.<sup>15</sup>

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<sup>13</sup> T. Stawecki, *op. cit.*, p. 39.

<sup>14</sup> A. Gryszczyńska, *op. cit.*, p. 20.

<sup>15</sup> T. Stawecki, *op. cit.*, pp. 42–43.

The selection function is a consequence of the registration and law-making function of public registers. This function implies that in order to engage in business operation, it may be necessary to be entered in a public register. For example, it may be necessary to obtain an entry in the register to undertake commercial or general business. In the past, such a function was fulfilled by, for example, an entry on the list of guild members, granting the right to practice a particular profession. Therefore, the selection function is a kind of separation of beneficiaries of certain rights or privileges from those who have not been granted them. The selection function is also closely related to the control function of the register. The idea is, after all, to limit administrative control over the activities of persons solely to checking the legality of the activities undertaken. The register is thus designed to eliminate discretionary or non-legal checks. This means that if certain entities are registered, anyone who meets certain formal conditions should be entered in the register and may engage in certain lines of business.<sup>16</sup>

The fiscal function, on the other hand, implies that the persons concerned are usually prepared to pay an additional tax or fee to be entered in the register. However, it should be borne in mind that registration in many registers, in particular administrative registers, does not involve additional fees because registration activities are part of the current tasks of the administration and there is no reason for the budget to derive additional revenue from them.<sup>17</sup>

Whereas some of the functions listed are in conflict with others, or may not be reconciled completely, e.g. the informational and protective functions, it is difficult to find a register which fulfils all the functions listed. However, their discussion is important, given the subject of this book, because both the Prussian (and more broadly German) registers and the Polish registers, which were largely based on them, invariably serve the same functions as discussed above.

Another important issue when considering the nature of public registers is the question of their typology. Two basic groups of public registers can be distinguished. The former serves to disclose the rights in rem in property whose peaceful enjoyment is of great importance to society. The books of this group protect owners, pledgees or other users by disclosing and recording in writing the creation, transfer and extinction of rights in rem related to the property. This group may be referred to as public property registers. They include, among other things, land registers, the register of maritime vessels, the register of patents or the register of trademarks. The latter, on the other hand, aims to disclose

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<sup>16</sup> *Ibidem*, p. 45.

<sup>17</sup> *Ibidem*, pp. 46–47.

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certain business entities and persons authorised to act on their behalf and, above all, to incur obligations on their behalf. This group increases the security of contractual rights by identifying the persons responsible for the obligations. This group of registers can be referred to as public personal-turnover registers. This group includes, among other things, the commercial register, the register of cooperatives, and the register of associations.<sup>18</sup>

Another division of public registers can be made in terms of the breadth of data they collect. This typology makes it possible to indicate primary and secondary registers. Primary registers include, for example, the National Court Register, the Business Register, and the National Criminal Information Centre. These registers contain information on all major economic events subject to registration. Auxiliary registers, on the other hand, contain information of a specific type. These include REGON, NIP and the National Criminal Register.<sup>19</sup>

An important distinction in the typology of registers is that of the authorities keeping the register. Depending on whether the register is kept by a court or by a state or local government body, one can distinguish between court or administrative registers.<sup>20</sup>

A distinction can also be made between subject and object registers. Subject registers are used to collect and disclose information on natural or legal persons or organisational units with a certain degree of autonomy in legal transactions. These include, inter alia, marital status registers, commercial registers, registers of associations, registers of convicts or taxpayers' registers. Object registers, on the other hand, reveal the legal status of specific items (such as real estate) or specific rights and obligations vested in certain entities (by way of illustration of contractual or statutory pledges or patent rights).<sup>21</sup>

In terms of the functions performed by registers, the following types can be identified: ordering (e.g. marital status registers), regulating (land and mortgage registers in Germany, registers of traders or entrepreneurs), subordinating (land registers), guaranteeing (modern registers of traders, corporations and enterprises), disclosing.<sup>22</sup>

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<sup>18</sup> Z. Żabiński, op. cit., pp. 11–12.

<sup>19</sup> Z. Kukuła, *Rejestry publiczne jako źródło weryfikacji informacji o przestępstwach gospodarczych*, Kontrola Państwowa, year 52, Issue 4 (315), 2007, pp. 25–26.

<sup>20</sup> T. Stawecki, op. cit., p. 31.

<sup>21</sup> Ibidem, p. 32.

<sup>22</sup> Ibidem, pp. 254–255.

Irrespective of the typology of public registers, two basic models of organisation of public registers can be distinguished, occurring due to the different methods of collection and maintenance of information about the register, these are:

1. a model for the collection, indexing and storage of documents originating from outside;
2. a model in which the information contained in the dossier is processed and specific information is entered in the register on the basis of the documents submitted.<sup>23</sup>

The model based on the collection of documents applies the concept of notification (notification registers). However, it should be borne in mind that notification is in fact the official communication of a certain piece of information from the sender to the addressee, whereas these registers only act as an intermediary and what they collect are documents confirming the existence of certain facts or the performance of legal acts by others. Furthermore, notification as an official communication may lead both to the registration of a document in a “register of documents” and to an entry being made in the register in the usual way.<sup>24</sup>

There is also a solution combining the elements of entry and deposit of a document (notification). These are the so-called transcription registers. Their maintenance consists in making an entry in the register books, where the subject of the entry is the full content of the document submitted to the registration authority. The authority may not correct or modify the transferred content, its role is limited only to public disclosure of the act made by other persons. In Poland, this is currently applied in marital status registers, where transcription is the entering into the register of the content of a foreign copy of a marital status register record.<sup>25</sup>

The most common practice is to combine both methods of recording data in the register: making entries and accepting documents into the register files, while assuming that their content is not the subject of the entry, and the registration authority keeps them in the files due to the principle of openness.<sup>26</sup> For both Prussian and German registers, we will primarily encounter a mixed model of keeping registers. In all of the registers in question, the basis for entry was and is essentially documents or declarations submitted to the registration

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<sup>23</sup> Ibidem, p. 56.

<sup>24</sup> Ibidem, p. 57.

<sup>25</sup> Ibidem, p. 61.

<sup>26</sup> Ibidem, p. 60.

authority. These documents are then processed and entries in the registers are created on their basis. The files themselves, on the other hand, are collected and stored by the registration authority alongside the relevant register books. In this respect, the Polish registers have followed the German practice and its concept of *Eintragung*.<sup>27</sup>

Although the typology of public registers is important for the discussed issue, the division into court and administrative registers, on which the construction of the presented dissertation is based, will be of the greatest importance. It is also a division of fundamental importance in the case of Prussian registers. When choosing the typology of public registers, the most vital thing is the nature of the bodies that operate them and the procedures they use. Among the administrative registers in Prussia, we can distinguish the marital status registers, the register of patents, the register of utility models, the register of trademarks, and the land tax cadastre. Court registers, on the other hand, were land registers, commercial registers, registers of cooperatives, associations and water cooperatives, registers of the sea and inland vessels, as well as registers of designs, matrimonial property rights and the stock exchange register.

The problem of entries and their systematics is also central to the issue of public registers. Entries in public registers can be divided into obligatory and optional. An entry is obligatory when the provisions of law require its making, and optional when its making depends on the will of the entitled party. Entries may also be divided into positive and negative ones. A positive entry is one that discloses new data in the land and mortgage register. On the other hand, deletion of data is a negative entry. Whether the court makes an entry on its own initiative or on the initiative of an interested entity, entries made *ex officio* and upon application can be distinguished.<sup>28</sup> In terms of their meaning, entries can be divided into revealing (declarative, declaratory) and law-making (constitutive).<sup>29</sup> A constitutive entry is one that is one of the conditions for the creation, change or cancellation of a right. A declarative entry, on the other hand, only reveals a change in the legal status that has already taken place.<sup>30</sup> Law-making entries can be divided into:

1. Entries which cause to arise only circumstances that are the subject of the entry, provided that the entry does not rectify the shortcomings derived from the circumstances entered;

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<sup>27</sup> Ibidem, p. 393.

<sup>28</sup> M. Deneka, *Księgi wieczyste. Zasady materialnoprawne*, Warszawa 2010, pp. 69–70.

<sup>29</sup> Z. Żabiński, *op. cit.*, p. 81.

<sup>30</sup> M. Deneka, *op. cit.*, p. 69.

2. Entries which cause circumstances that are the subject of the entry to arise, and at the same time they cure (remedy) deficiencies occurring at their origin. The entries of the other type are called curing entries.<sup>31</sup>

In German law, there are all types of entries mentioned above, which will be discussed in more detail when discussing individual registers. Polish legislation does not know curing entries.

The issues presented above are central to understanding what public registers are and what they are for. Although these considerations are based mainly on contemporary Polish legal thought, they are so universal that they can also be successfully applied to the registers of the 19th century in the Kingdom of Prussia and later in the German Empire. Thus they make it possible to specify the registers to be the subject of this book. These will be: marital status registers (*Geburts-, Heirats-, Sterbe-Register*), land registers (*Grundbücher*), land and building tax cadaster (*Grund- und Gebäudesteuerkataster*), registers of commerce, associations and cooperatives (*Handels-, Vereins-, Genossenschaftsregister*), registers of specimens (*Musterregister, die Rolle für Gebrauchsmuster*), trade mark register (*Zeichenrolle*) patent register (*Patentregister*), register of matrimonial property rights (*Güterrechtsregister*), stock exchange register (*Börsenregister*) and registers of maritime and inland vessels (*Seeschiffsregister, Binnenschiffsregister*).

## *1.2 History of public registers until the end of the 19th century*

The typology, functions and meaning of the notion of a public register result from the historical development of this legal institution. For this reason, presenting the history of registers is important also because modern public registers are strongly rooted in their history and inherit many ideas and solutions of the historic law.<sup>32</sup> Demonstrating the connection between modern public registers in Poland and their predecessors is also a basic assumption of this book.

Land registers and cadastres probably were first to be created of all public registers. On the other hand, registers recording information on persons, their marital status and legal status, including, inter alia, marital status registers, have a much shorter history.<sup>33</sup>

For centuries, the act of describing and documenting the boundaries of land was intended to provide evidence of ownership of rights to a plot of land

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<sup>31</sup> Z. Żabiński, op. cit., p. 83.

<sup>32</sup> T. Stawecki, op. cit., p. 245.

<sup>33</sup> Z. Żabiński, op. cit., p. 12.



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described and demarcated in space and to give the owner a guarantee of the inviolability of his possession, thus forming the beginnings of modern public registers. In the area of the city of Nuzi in Babylon, information regarding descriptions and dimensions of land plots and their sales price were recorded on clay tablets. About 200 tablets over 6500 years old have been discovered in this area. Discoveries in the Euphrates and Tigris valleys, dating back to around 4,000 BC, suggest that in this region property rights were protected by stabilising boundaries with boundary stones. On clay tablets, however, a description of the land was written, including the area of plots and their size, property rights and spells to protect the boundaries and owners.<sup>34</sup> These tablets collected in temples constituted some of the oldest archives in the world.<sup>35</sup> The obligation to record deeds of property transfer on clay tablets and to keep them was also enshrined in Article 37 of the Code of Hammurabi. The public breaking of such a tablet with a sale and purchase agreement was tantamount to invalidating the transaction.<sup>36</sup> The procedure for buying a field is also described in the Holy Scriptures, in the book of Jeremiah<sup>37</sup> and confirmed in papyri found in Elephantine (a Jewish colony on the Nile). The transaction consisted in writing the same contract twice on one sheet, in such a way that one part was rolled up and sealed, and the other was rolled up only without the seal. On the one hand, this solution was intended to allow the contract to be read freely and, on the other, to prevent interference with its content.<sup>38</sup> Another solution was used in ancient Athens, where property boundaries were marked with boulders called *horoi*, on which information about the owner and loans granted was placed (pledge poles). Inscriptions on the boundary stones also indicated that the plot of land was subject to a right of repurchase in the event of sale. The first property register in the modern sense, called the archive of deeds of possession (*bibliothèque enktéseon*), was in operation in the 1st century AD in Egypt. The archive collected evidence, much like a land register does, confirming rights to a property and its mortgages, and recorded other important activities concerning land and slaves, so that “no person acquiring rights could be deceived by his ignorance”. In Rome, on the other hand,

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<sup>34</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, Katowice 2009, pp. 239–240.

<sup>35</sup> M. Rokosz, *Archiwa w państwach starożytnych*, Archeion, Issue 53, 1970, pp. 62–66 and H. Robótka, B. Ryszewski, A. Tomczak, *Archiwistyka*, Warszawa 1989, p. 179.

<sup>36</sup> R. C. Ellickson, Ch. DiA. Thorland, *Ancient Land Law: Mesopotamia, Egypt, Israel*, Chicago-Kent Law Review, Vol. 71, Issue 1, 1995, pp. 279–280.

<sup>37</sup> *Księga Jeremiasza 32, 9–14*, In: *Pismo Święte. Biblia Tysiąclecia*, Poznań 2002, p. 957.

<sup>38</sup> R. C. Ellickson, Ch. DiA. Thorland, op. cit., pp. 380–381.

the property was marked out by setting up boundary boulders, and the content of the deed of transfer of ownership itself was written down publicly on wooden tablets, either before a representative of the authority (praetor or governor) or as a result of legal actions requiring witnesses and a person responsible for the fair determination of payment.<sup>39</sup>

The institution of land surveying was also known in Poland. During the reign of Sigismund II Augustus, in the years 1549–1561, first in the property of Queen Bona, and then in the Grand Ducal Estates in Lithuania, Samogitia and Podlasie, an agricultural reform called Volok-based land survey (*pomiar włóczy*) was carried out.<sup>40</sup> On 1 April 1557, Sigismund II Augustus issued the “Volok-based land survey” act, amended and supplemented on 20 October 1557 and in 1558. It consisted in dividing the land, depending on its purpose, into registration units (*Voloks*), for which measurement registers and maps were established, which constituted the basic document that enabled property status to be determined and property to be demarcated. These documents were used until the cadastral campaign at the turn of the 18th and 19th centuries. In Lithuania, these measurements retained their evidential value in boundary disputes and the enfranchisement of peasants until the middle of the 19th century.<sup>41</sup>

In the Prussian part of the partitioned territories, the establishment of the land cadastre was attributable to the need to carry out tax reforms, which had begun at the turn of the 18th and 19th centuries and were to serve the purpose of introducing uniform rules for calculating benefits, instead of the previous different systems of determining and collecting them.<sup>42</sup> In Prussia, the cadastre was established between 1861 and 1864 under the Act of 21 May 1861 on the Regulation of Land Taxes, which introduced uniform rules for the assessment of tax payments, covering all property owners and the classification of land and the valuation of the resulting income, and which formed the basis for the establishment of the institution of a land and building tax cadastre (*Grund- und Gebäudesteuerkataster*).<sup>43</sup> As a result of the 1872 law on the unification of

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<sup>39</sup> D. Felcenloben, op. cit., pp. 241–242.

<sup>40</sup> K. Sawicki, *Pięć wieków geodezji polskiej. Szkice historyczne od XV do XIX wieku*, Warszawa 1968, p. 36.

<sup>41</sup> M. Mika, *Historia katastru polskiego*, Infrastruktura i ekologia terenów wiejskich, Issue 6, 2010, p. 77.

<sup>42</sup> D. Felcenloben, op. cit., pp. 243–244.

<sup>43</sup> Ch. Brands, M. Grandtke-Hanzsch, M. Olschewski, *140 Jahre Grundsteuerreform – Am 21. Mai 1861 wurde das Gesetz betreffend die anderweite Regelung der Grundsteuer verkündet*, Vermessung Brandenburg, Issue 2, 2001, pp. 51–53.

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entries in land registers with cadastral data, the land tax cadastre was gradually transformed into a real estate cadastre.<sup>44</sup>

Although mortgage originated in ancient times and was known in many ancient legislations,<sup>45</sup> the registers of real properties and related rights appeared in Europe in the Middle Ages. As mentioned, they were similar to modern cadastres, but also similar to modern land registers. Among those registers, registers which made it possible to determine the persons to whom the rights to real estate belonged (owners, tenants under various titles), as well as encumbrances, including mortgages (pledge rights), were of greater importance, while control and fiscal functions were given clear priority over others. The practice of using court books to record real estate transactions was known not only in Germany, but also in Moravia and Bohemia as early as the 12th century. In Poland, the oldest mention of them dates back to 1322, and from the end of the 14th century they were known throughout the country.<sup>46</sup> It is worth also mentioning Domesday Bok, drawn up in 1081–1087 by order of William the Conqueror, which includes descriptions of properties located in almost all of England (except Counties of Cumberland, Northumberland and Durham). This book, which was, in fact, the prototype of the modern cadastre, was used to determine to whom the monarch granted rights to certain landed estates, which entailed fief obligations. Establishing the identity of vassals led to the determination of their status and thus to the definition of rights and burdens attached to the properties. The Domesday Book also knew, among other things, the institution of transferring rights to real estate as collateral for a debt, which became the basis for modern forms of land mortgages in the future. However, in the end, it did not record changes in the ownership of land, and for this reason, it did not become the nucleus of land registers.<sup>47</sup>

The beginnings of the development of land and mortgage registers are connected with feudal law tendencies to the interference of state bodies in the acts of land ownership. Initially, the registration had only evidential significance, but gradually the registers turned into a factor determining the acquisition or loss of property and other rights in rem, and those concerning a movable property. In the Middle Ages, however, the significance of the books was basically limited

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<sup>44</sup> D. Felcenloben, op. cit., p. 244.

<sup>45</sup> B. Błażejczak, *Powstanie hipoteki i jej przedmiot*, Poznań 1968, p. 11.

<sup>46</sup> T. Stawecki, op. cit., pp. 184–185.

<sup>47</sup> Idem, *Rejestry nieruchomości, księgi hipoteczne i księgi wieczyste od czasów najdawniejszych do XXI wieku*, *Studia Iuridica*, Issue 40, 2002, pp. 181–182.

to the fact that in some cases the acquisition of property was dependent on the making of an entry in the books.<sup>48</sup>

It is worth noting that in northern Germany, due to the development of trade, ledgers appeared as early as the 13th century in large cities to secure private debts on real estate. These ledgers were called mortgages. Gradually this institution spread to other countries. Mortgages registered property titles and debts for which the property owner was liable in rem.<sup>49</sup>

An important step towards the establishment of modern property registers was also made in Poland. The Sejm constitution of 1588 “On the validity of bequests” provided priority to the creditor who first caused his rights to real estate to be recorded in the books of the municipal or land court having jurisdiction over the location of the real estate. This solution applied primarily to the transfer of ownership of the real estate. However, it was also applied to the registration of rights encumbering such real estate. It was also at that time that the notion of mortgage appeared in Polish law. The Act of 1588 significantly developed the idea of a public register. Among other things, it provided interested parties with access to court records “for a small fee”. Thus, the constitution formulated the principle of formal openness of the public register. The constitution also introduced the principle of particularity, i.e. the rule that the sum of the secured claim and the object of the security should be precisely stated in the book. Despite its progressiveness, the 1588 constitution did not lead to the creation of land or mortgage registers.<sup>50</sup> This did not happen until the 1755 Parliamentary Constitution on Debt Insurance, which introduced the institution of separate land registers.<sup>51</sup> In 1768, however, a parliamentary constitution was issued providing that contracts transferring ownership of the real estate and contracts encumbering the real estate that were drawn up in the wrong county were ineffective if no entry was made in the proper book within the proper time (one year and six weeks).<sup>52</sup>

In the countries of Western Europe, the idea of land registers developed in much the same way, but generally more slowly than in the states belonging to the German Reich, and with difficulty in France. A system of the requirement to

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<sup>48</sup> B. Barłowski, E. Janeczko, *Księgi wieczyste – rejestr nieruchomości*, Warszawa 1988, p. 5.

<sup>49</sup> R. Moszyński, L. Policha, A. Izdebska, *Księgi wieczyste*, Warszawa 1960, pp. 5–6.

<sup>50</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, pp. 185–186.

<sup>51</sup> R. Moszyński, L. Policha, A. Izdebska, op. cit., p. 6.

<sup>52</sup> M. Deneka, op. cit., pp. 18–19.

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register changes of ownership existed in several areas of northern France, where customary law of Germanic origin was in force. Seeing the advantages of this solution, Colbert, Louis XIV's minister, tried to extend it to the rest of the country, causing an edict to be issued in 1673. The idea was not revisited until the end of the 18th century, with the passing of the laws of 9 Messidor Year III (27 June 1795) and 11 Brumaire Year VII (1 November 1798) for all of revolutionary France. These laws provided for the ineffectiveness of the transfer of immovable property until the contract was registered in a special register kept at court. However, these laws were repealed by the Napoleonic Code, whose authors adopted the principle of consensualism.<sup>53</sup>

The earliest modern registration of real estate and property rights was introduced in the German states. In Prussia, special land registers were already provided for in an edict of 1704. Eventually, the Prussian Landrecht of 1 June 1794 introduced a provision that a mortgage right could only be acquired by "intabulation" in a public register.<sup>54</sup> Important legal acts of this period included also the Prussian Land Book Ordinance of 1872, the Austrian Act of 1871 and the All-German Land Book Ordinance of 1897<sup>55</sup> which developed the provisions of the German Civil Code of 18 August 1896, which finally introduced the land register system in Germany. Similar solutions to the German ones were also in force in Austria. The German land register was organised for property located in a relevant district. As a rule, land registers were common, i.e. they were established for each legally separate property. It was also the rule that the operation of land registers was based on the principle of entry rather than on the filing of documents. Moreover, the entry in land registers (including the section on ownership) was constitutive, so no property rights could arise either between the parties or vis-à-vis third parties without an entry. This meant that the so-called principle of entry (*Eintragungsprinzip*) was adopted. Entry could take place, in principle, at the request of the person entitled, but the court could also act ex officio. The other important element of the German system was that registration was judicial in nature. The keeping of the register was one of the routine duties of the courts of first instance. During the period covered by this thesis, these were the District Courts (*Amtsgericht*). It was in German law that the principle of the register being kept by the court as part of its adjudicative (non-procedural – German *freiwillige Gerichtsbarkeit*) tasks, and not, as before,

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<sup>53</sup> T. Stawecki, op. cit., pp. 186–187.

<sup>54</sup> Idem, *Rejestry nieruchomości, księgi hipoteczne i księgi...*, p. 188.

<sup>55</sup> B. Barłowski, E. Janeczko, op. cit., p. 6.

at the court, was finally constituted. The scope of the judge's examination of the application for entry was in practice unlimited.<sup>56</sup>

Relatively early, at the turn of the 18th and 19th centuries, a system of land registers was also introduced in the partitioned Polish territories. In the Prussian partition, this system was introduced immediately after the fall of the Republic. In the Russian partition, initially, the old law was maintained. In the Duchy of Warsaw, however, the provisions of the Landrecht, and later the Napoleonic Code, began to be applied as auxiliary rules. In the Congress Kingdom in 1818, the Napoleonic Code was replaced by the Law on Establishing Ownership of Immovable Property, Privileges and Mortgages. This law introduced the institution of land registers, which functioned until 1947. The solutions introduced in the law of 1818 concerned only the larger landed property and real estate from 8 cities of the Kingdom. This was partially changed in 1825 by the Law on Privileges and Mortgages, which extended the keeping of land and mortgage registers also to other properties. However, in the Russian partition land and mortgage registers were of an optional nature.<sup>57</sup> In the Austrian partition, the registration of real estate was carried out on the basis of a tabular patent from 1774, introduced in Galicia in 1780.<sup>58</sup> It is worth emphasizing that it was only in the 19th century that the original function of land registry systems in the modern era, which was the registration of debts, lost its significance. In that period, the facilitation of the circulation of property ownership came to the fore by surrounding it with a guarantee of the most far-reaching inviolability, which found its expression in the principle of the warranty of public faith of land registers.<sup>59</sup>

In contrast to registers of immovable property and associated rights, the need for a register relating to merchants and companies was only realised in the Middle Ages. This was related to the development of trade and the increase in the value of merchants' movable property and their transactions. In fact, guild registers were used by merchant and craft corporations from at least the 13th century, e.g. in Italy. Initially, members of corporations and guilds and their employees were entered in them. At the end of the 14th century, individual merchants, i.e. those without partners or employees, also began to be registered

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<sup>56</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, pp. 187–188.

<sup>57</sup> B. Barłowski, E. Janeczko, op. cit., p. 6.

<sup>58</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, p. 188.

<sup>59</sup> L. Górnicki, *Problemy prawnej ochrony nieruchomości, nie wpisanej do ksiąg grunтовых w okresie zaborów i w Polsce niepodległej*, In: *Acta Universitatis Wratislaviensis, Prawo*, Issue 276, *Studia Historycznoprawne*, ed. A. Konieczny, Wrocław 2002, p. 169.

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in Italy. When it became acceptable to run a business under a name other than one's surname (business name), the idea of registering this firm also arose, as it was noted which trademarks were used by individual trading houses. Thus already during the early Italian Renaissance, the idea of a company register appeared, which was developed in the 19th century.<sup>60</sup>

The breakthrough in the creation of commercial registers, however, is attributed to the General German Commercial Code (*Allgemeines Deutsches Handelsgesetzbuch*) of 1861, which was adopted as a model for all German states.<sup>61</sup> The Code entered into force in Austria in 1863 and in northern Germany in 1869. Its principles were also incorporated into the German Commercial Code of 1897.<sup>62</sup>

Commercial registers also appeared in Poland at the end of the 19th century as a consequence of reforms undertaken in the partitioning states of Prussia and Austria.<sup>63</sup> Unlike the other registers, in the case of the commercial register, the original Polish regulations were introduced at the beginning of the Second Republic. These were a decree of the Head of State of 7 February 1919 and a regulation of the Minister of Justice of 22 April 1919 on the commercial register.<sup>64</sup> These solutions will be discussed in the following chapters.

The history of the commercial register is also inextricably linked with the history of the cooperative register. This is because the register of cooperatives was most often a variant of the commercial register.<sup>65</sup>

Marital status registers, on the other hand, or more broadly registers relating to information about citizens' marital status and their rights, have followed a different path of development. The earliest such registers were linked to the needs of churches recording information about their congregations.

The earliest records of various kinds, usually in the form of diptychs, of the names of baptised persons, of bishops or the faithful of a Christian community can be found from at least the 3rd century onwards. It is in these registers that we can find the prototype of metric registers, which later became the model for secular marital status registers.<sup>66</sup>

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<sup>60</sup> Ibidem, pp. 177–178.

<sup>61</sup> S. Salmonowicz, *Prusy. Dzieje państwa i społeczeństwa*, Warszawa 1998, p. 335.

<sup>62</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, p. 180.

<sup>63</sup> M. Wrzolek-Romańczuk, op. cit., p. 14.

<sup>64</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, pp. 180–181.

<sup>65</sup> M. Wrzolek-Romańczuk, op. cit., p. 9.

<sup>66</sup> M. Dyjakowska, *Rejestracja stanu cywilnego w Polsce przedrozbiorowej*, *Metryka. Studia z zakresu prawa osobowego i rejestracji stanu cywilnego*, year 2, Issue 1, 2012, pp. 19–20.

The first marital status registers, kept in the form of church registers, appeared in France and Italy as early as the first half of the 14th century. However, their maintenance by individual parishes was not frequent. At the turn of the 15th and 16th centuries, synods in some countries began to recommend that parish priests keep records of baptisms, weddings, Easter confessions, and the deceased. These records were justified by the need to control the faithful in terms of observing church regulations, the origin of legitimate children, to enable the validity of a marriage or the existence of possible marriage impediments.<sup>67</sup>

Baptismal register registers became widespread in Europe during the Reformation, as both Catholics and Protestants began keeping records of their faithful. In the case of the Catholic Church, this obligation was imposed in 1563 by the Council of Trent in the *Tametsi dubitandum* decree.<sup>68</sup> The Council's resolutions ordered the clergy to keep baptism and marriage registers (recording the sacraments). In 1614 *Roman Ritual* issued by Pope Paul V extended registration to funerals and censuses of the faithful (to provide statistics for ecclesiastical purposes and to record clergy income related to pastoral services).<sup>69</sup>

In England, the process of secularisation of documents and marital status registers did not cause particular religious or political conflict. In 1603 it was made compulsory to keep in every church and chapel, a register in which the clergyman entered all baptisms, marriages and funerals, with copies of the entries sent annually to a special officer in the diocese. From 1812 (*Parochial Register Act*) such registers were to be kept in steel boxes, and from 1832 were subject to the control of the Royal Registrar General. Birth registers kept outside parishes were regulated somewhat later, by the 1840 Act (*Non-Parochial Register Act*). Death registers were regulated by the 1847, 1853 and 1864 Acts, which were amended on several occasions (*Burial Act of Registration of Burials Act*).<sup>70</sup>

In Poland, the oldest church registers date back to the second half of the 16th century and are the registers of marriages celebrated in St. Mary's Church in Cracow from the years 1548–1585. Officially, the obligation to keep church registers (of baptisms and marriages) was introduced in Poland by synods

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<sup>67</sup> E. Tarkowska, *Prawne kształtowanie się instytucji rejestracji stanu cywilnego na ziemiach polskich do roku 1986*, Białystok 2015, p. 13.

<sup>68</sup> K. Buliński, *Wydawanie odpisów aktów stanu cywilnego oraz migracja aktów stanu cywilnego sporządzonych przed 1 stycznia 1946 r. z obcą pisownią imion ze szczególnym uwzględnieniem aktów stanu cywilnego znajdujących się w wyznaniowych rejestrach stanu cywilnego*, *Metryka*, Issue 1, 2017, p. 120.

<sup>69</sup> E. Tarkowska, op. cit., p. 13.

<sup>70</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, p. 175.



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convened after the Council of Trent in the years 1579–1602. The obligation to keep death registers was introduced by the Piotrków Ritual issued in 1631. Due to the lack of diligence on the part of the clergy, who often perceived the keeping of registers as an unnecessary duty, as well as the unwillingness of society to pay for pastoral services which constituted a substantial income for priests, the records of events in Polish registers of pre-partition times are estimated to be lower than they actually were. Marriage registers, which generally reflect the number of marriages, were kept most carefully. This was mainly due to the fact that the conclusion of a marriage before a clergyman was important for the legality of children. From 1764 onwards, baptismal certificates were of great importance in Poland. Only baptismal certificates entered at the municipal registry office competent for the place of residence could be used to prove nobility and legal origin. The introduction of such a requirement resulted from the inaccurate keeping of books by priests. Clergymen were obliged, right at the beginning of the year, to send information about baptisms administered in a parish in the previous year to the municipal chancellery. Failure to comply with this obligation could result in a fine. Recognising the great importance of registering subjects, the resolutions of the Four-Year Sejm of 1789 established separate civil and military order committees for the Crown and Lithuania, operating in each province and district. Their tasks included keeping records of the population and compiling statistical lists for military purposes on the basis of copies of baptism, marriage and death certificates received annually from the clergy of all denominations, together with information on the sex, age and place of residence of each person. The commissions were active between 1790 and 1792.<sup>71</sup> Until the end of the First Republic, however, civil registration had a confessional character.

Secular registration of marriages for non-Catholics was first introduced in France in 1787. From that point onwards, designated court officials were responsible for keeping records. Universal secular registration, on the other hand, was introduced by the Constitution of 3 September 1791, which stipulated that the legislature would establish for all inhabitants the manner in which marital status was to be ascertained and that public officials would be appointed to keep and preserve the relevant records.<sup>72</sup> This directive was implemented by a decree of the National Assembly of 20 September 1792. Whereby, secular registry offices were established, stripping the churches of their powers in this area. Registration

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<sup>71</sup> E. Tarkowska, *op. cit.*, pp. 14–17.

<sup>72</sup> Z. Pomianowski, *Funkcjonowanie francuskiego modelu rejestracji stanu cywilnego w Polsce*, *Czasopismo Prawno-Historyczne*, Issue 67/1, 2015, p. 95.

was to be carried out exclusively by secular officials. The decree also made civil weddings before municipal officials compulsory. The provisions of the decree also allowed for divorce and placed matrimonial cases under the jurisdiction of ordinary courts. For the French state, therefore, marriage became primarily a civil contract.<sup>73</sup> By virtue of the law of 21 March 1804, the French Civil Code (since 1807 the Napoleonic Code) entered into force, which, in Articles 34–101 of Book I of the Code, entitled *On persons*, contained provisions on marital status records.<sup>74</sup>

Under Article 69 of the Constitution of the Duchy of Warsaw of 22 July 1807, the Napoleonic Code also became the civil law of the Duchy. The aforementioned article of the Constitution, however, did not enter into force until the Act of 27 January 1808 between the King of Saxony and the Duchy of Warsaw on the introduction of the Napoleonic Code into Poland. The code was to come into effect on 1 May 1808.<sup>75</sup> A decree of 18 January 1810 also established municipal registers, which contained a census of the population living in the municipality. They were kept on the basis of extracts from the marital status registers sent quarterly to the municipalities. The officials responsible for keeping the registers also filed reports on legal events for military purposes and on deaths in succession cases.<sup>76</sup>

The Napoleonic Code was initially also maintained in the Congress Kingdom. It was not until 1/13 June 1825 that the Civil Code of the Kingdom of Poland, modelled on French law, was enacted. However, the new code repealed Chapter I of the Napoleon Code. The new law restored the religious character of marriage, the conclusion of which took place in accordance with the religious rules. Jurisdiction in matters of nullity and divorce was left to the courts. The handling of marital status records, on the other hand, was governed by Articles 71–138 of the Code.<sup>77</sup>

On 16/28 March 1836, the Tsar's Marriage Law Decree was issued, which superseded provisions 106–130 of the Civil Code.<sup>78</sup> Issues related to marital status registration are included in Volume IX on administrative law (Articles 859–955) and in Volume XI, Book I on the rights of Christian and non-Christian denominations in the state.<sup>79</sup> The legislation in force on the territory of the Russian partition and the Kingdom of Poland retained a denominational character. Universal secular registration in Russia was not introduced until 1917, after the October Revolution,

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<sup>73</sup> E. Tarkowska, op. cit., p. 18.

<sup>74</sup> Ibidem, p. 20.

<sup>75</sup> Ibidem, p. 27.

<sup>76</sup> Ibidem, p. 32.

<sup>77</sup> Ibidem, p. 35.

<sup>78</sup> Ibidem, p. 47.

<sup>79</sup> Ibidem, p. 55.

## 1.2 History of public registers until the end of the 19th century

under the Decree of the Council of People's Commissars of 18 December 1917 on civil marriage, children and the keeping of marital status registers. However, these provisions were not introduced in the territory of the Second Polish Republic.<sup>80</sup>

In Prussia, on 5 February 1794, the Prussian Landrecht was promulgated, which became legally binding on 1 June 1794. Under this law, the register books kept by Catholic and Protestant clergy were awarded with a public and legal nature. They were also obliged to keep accurate birth, marriage and death registers and to make certified copies of them. In accordance with the law, these books had to be sent for safekeeping to the court of first instance, which had jurisdiction over the villages within the parish concerned.<sup>81</sup> By a decree of 30 March 1847, births, marriages and deaths of dissidents were excluded from the competence of the Catholic clergy and began to be certified civilly in the courts of first instance.<sup>82</sup>

In Poland, the Landrecht did not come into force until 1 September 1797, with the possibility of applying Polish law and customs in the specific cases mentioned, and with the preservation of church law for matrimonial matters.<sup>83</sup> After the Congress of Vienna, the Prussian Landrecht was reinstated on 1 March 1817 on the territory of the Grand Duchy of Posen, which was temporarily part of the Duchy of Warsaw. Secular civil registry offices were abolished on 17 March 1817, thus restoring the religious nature of registration.<sup>84</sup>

The registration of the Jewish population was solved in a different way. In the years 1794–1812, the duty of registering them rested with the magistrates. On 11 March 1812, an edict on the civic situation of Jews was issued. In the new regulation, the legislator divided the Israelite population into two groups – naturalised and non-naturalised Jews. The first group included those who had an appropriate property status, permanent occupation and place of residence and decided to adopt a hereditary surname. According to the edict, the naturalised Jews were registered as state citizens and were required to register their births, marriages, divorces and deaths in a civil manner before the municipal police authorities or, in the case of rural residents, before the Landrat. However, the civil registration did not include non-naturalized Jews, the facts of their life were registered only in the community to which they belonged. On 23 July 1847, a law

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<sup>80</sup> Ibidem, p. 57.

<sup>81</sup> *Księgi metrykalne i stanu cywilnego w archiwach państwowych w Polsce. Informator*, ed. Anna Laszuk, Warszawa 2000, p. III.

<sup>82</sup> B. Krośko, *Świeckie i wyznaniowe księgi stanu cywilnego w Archiwum Państwowym w Koszalinie*, Archeion, Issue 86, 1989, p. 65.

<sup>83</sup> E. Tarkowska, op. cit., pp. 58–59.

<sup>84</sup> Ibidem, p. 61.

was passed on the registration of the marital status of Jews, under which, from 1849 onwards, the function of registering the marital status of Jews was taken over by district courts.<sup>85</sup> It should be noted that this was the only population group in the Kingdom of Prussia for which civil registration was mandatory.<sup>86</sup>

The first attempts to introduce a secular marital status registration in the Kingdom of Prussia were made in 1859–1861. Still, they were not successful due to resistance, mainly from the royal court. It is worth noting that these were not the first such attempts on German territory. In 1803, under the influence of French troops, based on the code of Consul Bonaparte, they were introduced in Rhineland, Palatinate and a part of Hesse. In 1809, they were introduced in Baden, and between 1811 and 1814, they operated in Frankfurt am Main. The Frankfurt Parliament also postulated the introduction of secular civil registries in 1850, but the attempt failed due to Germany's collapse of unification tendencies.<sup>87</sup>

Eventually, the general secular registration of the population in the Kingdom of Prussia was introduced by the Prussian law of 9 March 1874 on the certification of marital status and the form of marriage. Secular Registry Offices commenced operations on 1 October 1874.<sup>88</sup> However, it was soon established that the introduced procedure worked. For this reason, by the law of 6 March 1875, universal secular registration of the population was introduced throughout the German Empire on 1 January 1876.<sup>89</sup> Both laws contained analogous provisions and completely separated marital status registration from religious rites. As a result, the civil registration of births, deaths and marriages was mandatory for the entire population of the state, irrespective of denomination.<sup>90</sup> The other of the above legal acts proved considerably durable since it remained in force in the territories of the former Prussian partition until the administration was

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<sup>85</sup> More: P. Gut, *Przepisy o rejestracji ruchu naturalnego ludności żydowskiej w Prusach w latach 1847–1874*, In: *Żydzi oraz ich sąsiedzi na Pomorzu Zachodnim w XIX i XX wieku*, ed. M. Jaroszewicz, W. Stępiński, Warszawa 2007, pp. 305–313.

<sup>86</sup> E. Tarkowska, op. cit., p. 60.

<sup>87</sup> M. Szukała, *Powstanie, organizacja i działalność urzędów stanu cywilnego w okręgach wiejskich na Pomorzu w latach 1874–1875*, In: *Dzieje wsi pomorskiej. II międzynarodowa konferencja naukowa*, ed. R. Gadziński, A. Chludziński, Dygowo-Szczecin, 2003, p. 50.

<sup>88</sup> Gesetz vom 9. März 1874 über die Beurkundung des Personenstandes und die Form der Eheschließung, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1874, pp. 95–109.

<sup>89</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes und die Eheschließung, Reichsgesetzblatt, year 1875, pp. 23–40.

<sup>90</sup> *Księgi metrykalne i stanu cywilnego w archiwach państwowych...*, p. IV.

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taken over by the German occupants. In the territories that lay within German borders during the interwar period, the rules on marital status registration were reformed in 1920<sup>91</sup> and superseded by a new law in 1937.<sup>92</sup>

In the Austrian Partition, the basic law governing marital status registration was the patent of 20 February 1784, issued by Emperor Joseph II, regarding baptism, marriage and funeral records. In the Austrian Empire, registration for the entire population (regardless of religion) was carried out by Catholic clergy. By a court decree of 13 March 1792, the clergy became civil servants. Marital status registers were not kept for the whole parish, but separately for each village within its structures.<sup>93</sup> In Austria, a decree of 30 May 1849 made Protestant clergy of the Evangelical-Augsburg and Evangelical-Helvetic Churches civil registrars for their followers. Israelite certificates were given probative force by the Law of 10 July 1868 on the probative force of Israelite certificates. Over time, clergy of other recognised denominations were also given the authority of civil registrars for their worshippers. This happened in the years: 1864 (Greek-Oriental Church), 1877 (Old Catholic Church), 1880 (Evangelical Brethren Church), 1912 (Hanafi Church – Islam). Furthermore, secular weddings and registration were established in 1870 for the non-denominational and non-members of recognised churches.<sup>94</sup> Registration within the Empire and thus also within the Austrian partition thus maintained a predominantly denominational nature.

It should also be noted that it was only with the democratisation of political systems in the second half of the 19th century that voter registers became distinct from other forms of registering citizens.<sup>95</sup>

To sum up the above considerations, it should be said that public registers are kept especially where other forms of public disclosure of existing legal facts, and consequently of the rights of certain persons, such as possession, announcements in public places or mass media, etc., prove insufficient. By superimposing the regularity of the creation of registers on a historical scale, it can be seen that they are created mainly where the size of the social community and the spatial,

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<sup>91</sup> Gesetz über den Personenstand vom 11. Juni 1920, Reichsgesetzblatt, year 1920, pp. 1209–1210.

<sup>92</sup> Personenstandsgesetz vom 3. November 1937, Reichsgesetzblatt, year 1937, pp. 1146–1152.

<sup>93</sup> E. Tarkowska, op. cit., p. 68.

<sup>94</sup> Eadem, op. cit., pp. 74–76.

<sup>95</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, p. 177.

economic and social mobility of its members is so great that traditional ways of controlling the behaviour of individuals prove insufficient.<sup>96</sup>

Public registers serve first and foremost to provide reliable and trustworthy information since only an entity with such knowledge is in a position to make the right decisions or assess the risks of entering into a specific contract, acquiring an object or a right.<sup>97</sup>

As regards the keeping of public registers, their maintenance is most often entrusted to the courts. However, court registers have never been an exclusive solution. There has never been any question of entrusting central and local administrations and local government bodies with the keeping of public registers, such as marital status registers.<sup>98</sup>

Historical and comparative analysis also shows that there is no uniform model for the institution of a public register. There is a great variety of solutions adopted, even in such basic registers as marital status books, registers of entrepreneurs or companies, and land and mortgage registers. It should be emphasized, however, that many of the solutions used in Europe, including Poland, were modelled on German legislation. The other conclusion of the analysis is that modern registers are strongly rooted in older institutions and inherit many ideas and solutions from the old law. For this reason, it is possible to indicate their origin, sometimes even reaching antiquity.<sup>99</sup>

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<sup>96</sup> *Ibidem*, pp. 247–248.

<sup>97</sup> *Ibidem*, p. 248.

<sup>98</sup> *Ibidem*, pp. 259–260.

<sup>99</sup> *Ibidem*, p. 395.

PART I

*Administrative  
registers*





## CHAPTER 2

# *Marital status registers*

The discussion of the different elements of the public registers system will start with a presentation of the administrative registers. The first to be discussed are marital status registers.

### *2.1 General issues*

The object of registration in marital status registers, as its name implies, is the marital status of citizens. However, there is no single definition of marital status. In German science, for instance, one can find a definition implying that a person's marital status is the status in the family and in society which results from their membership with this family.<sup>1</sup> Another definition states that marital status is the fact of being within a family and one's place within it.<sup>2</sup> Marital status has also been defined as the relationship under family law between a person and other persons<sup>3</sup> or the legal position that a person has as a member of a particular family by virtue of descent, adoption, legal entitlement or marriage.<sup>4</sup>

In the Polish literature, marital status is defined as follows: the position a person occupies either in the family or in society and from which his rights and

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<sup>1</sup> K. von Strengel, M. Fleischmann, *Wörterbuch des deutschen Staats- und Verwaltungsrechts*, Band 3: O-Z, Tübingen 1914, p. 62, after J. Litwin, *Prawo o aktach stanu cywilnego. Komentarz*, Warszawa 1961, p. 17.

<sup>2</sup> K. Binding, *Lehrbuch des gemeinen deutschen Strafrechts: besonderer Teil*, Leipzig 1902, p. 231 after *Ibidem*.

<sup>3</sup> F. von Liszt, *Lehrbuch des deutschen Strafrechts*, Berlin 1908, p. 383 after *Ibidem*.

<sup>4</sup> A. Merkel, *Lehrbuch des deutschen Strafrechts*, Stuttgart 1889, p. 34 after *Ibidem*.

duties derive,<sup>5</sup> or the set of circumstances relating to legal capacity and capacity to perform acts in law, the marriage bond, consanguinity, adoption, affinity, name and surname which determine a person's legal position in the family and in society.<sup>6</sup> In a narrow sense, marital status refers to the legal situation within the family, that is the ties resulting from consanguinity and marriage. In a broad sense, it covers both the legal situation within the family and the personal situation of a person, i.e., age, sex, surname, etc.<sup>7</sup>

According to another view, a person's legal status consists of:

1. Citizenship (affiliation with a particular state),
2. Marital status (affiliation with a particular family),
3. Individual's personal status (age, sex, surname not resulting from family status, etc.).<sup>8</sup>

The marital status of persons is therefore based on purely physical (natural) events, legal acts of family law and decisions of state bodies. Natural events are birth and death. Birth creates a knot of consanguinity between persons: descent from a particular mother follows directly from the fact of being born of her; descent from the mother's husband, due to a legal presumption, also follows from the fact of being born of a particular mother. A direct kinship results from a series of consecutive births of persons descended from each other, while a secondary kinship results from the fact of descent from the same common ascendant. Similarly, if there is no marriage, it requires a declaration of will or a court decision to formally recognise it.<sup>9</sup> Acts in law based on a declaration of will are marriage and acknowledgment of paternity. Decisions by courts or state authorities must be based on family and guardianship laws, such as adoption, the judicial ascertainment of paternity, the ascertainment of maternity, the denial of maternity, the denial of paternity, the dissolution of adoption, the ascertainment of the ineffectiveness of ascertainment, or the dissolution and annulment of marriage.<sup>10</sup> Consequently, acts in law modifying marital status include:

1. recognition of a child whose father was previously unknown,

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<sup>5</sup> H. Konic, *Prawo osobowe: wykład porównawczy na tle prawodawstw obowiązujących w Polsce w zestawieniu z kodeksem szwajcarskim. Cz. 1*, Warszawa 1924, p. 62 after *Ibidem*.

<sup>6</sup> J. Górecki, *Unieważnienie małżeństwa*, Kraków 1958, p. 115 after *Ibidem*.

<sup>7</sup> A. Wilk, *Akt urodzenia*, Warszawa 2014, p. 45.

<sup>8</sup> *Ibidem*.

<sup>9</sup> J. Litwin, *op. cit.*, p. 19.

<sup>10</sup> A. Wilk, *op. cit.*, p. 49.

2. filing by the parents of a child whose father was previously unknown of a declaration of descent of the child from the mother's husband by reason of the parents' marriage,
3. dissolution of adoption,
4. entrance into marriage.<sup>11</sup>

It is important to underline that marital status as an object of rights is of a non-material nature and is linked exclusively to the person to whom it is given. Marital status rights are effective *erga omnes*, i.e. marital status determinations are also effective against third parties. This is a consequence of the principle of the indivisibility of marital status. Marital status rights are not transferable and are acquired by operation of law. They are not affected by the passage of time unless the law provides otherwise.<sup>12</sup> In view of the specific position of marital status rights, the law on marital status records contains rules applicable to everyone without exception. The main events to be registered are either boundary dates in a person's life or a fundamental act in law such as the establishment of a family.<sup>13</sup> The ascertainment of marital status has as its object:

1. birth, death and entrance into marriage, and
2. changes in marital status, that is to say, changes in consanguinity, adoption, dissolution and annulment of marriage.<sup>14</sup>

Marital status registration is thus a system of compulsory and continuous marital status records, including the data characterising these events. Marital status registration is carried out both in the interests of the State and in order to safeguard the rights of citizens deriving from relationships governed by family law.<sup>15</sup> Marital status records are thus first and foremost qualified proof of the events recorded in them, in the sense that the person who makes the entry on such a record is free to provide any other proof of a supplementary nature.<sup>16</sup> Such a provision was contained, amongst other things, in the German law on the certification of marital status and marriage of 1875, which, in § 15 stipulated that duly and carefully kept registers constituted proof of the events entered in them unless someone provided evidence of falsification, inaccuracy of the entry

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<sup>11</sup> J. Litwin, *op. cit.*, pp. 19–20.

<sup>12</sup> A. Wilk, *op. cit.*, p. 50.

<sup>13</sup> J. Litwin, *op. cit.*, pp. 7–8.

<sup>14</sup> *Ibidem*, p. 29.

<sup>15</sup> *Ibidem*, p. 22.

<sup>16</sup> *Ibidem*, pp. 28–29.

or of the report and of the findings on which the entry was based. Extracts from marital status records had the same evidentiary value.<sup>17</sup>

Marital status books have a double function. On the one hand, they serve to record and establish the legal events that are natural in the life of each individual and linked to the creation and termination of his rights, such as legal capacity and capacity to perform acts in law. On the other hand, marital status registration has served and continues to serve the State and institutions performing public tasks, since it provides valuable statistical data necessary for the proper organisation of public life and administration of the State.<sup>18</sup> As is clear from the above considerations, the fundamental function of marital status registers is that of record-keeping. Marital status books are kept mainly in order to enable information on events relevant to a person's marital status to be collected in an orderly way.<sup>19</sup> The characteristic solutions aimed at fulfilling the registration function of marital status records (not always typical of other public registers) include:

1. principle of universality;
2. obligation to restore marital status records in the event of loss or destruction of all or part of the record;
3. obligation to invalidate a single record if two marital status records mention the same event.<sup>20</sup>

As regards the types of registration operations, the registration function is carried out through:

1. establishing marital status records;
2. establishing other marital status records (so-called atypical records, such as the record of a marriage celebrated in the field);
3. registering court decisions or administrative decisions;
4. entering additional notes;
5. drawing up a report on declarations changing the marital status or affecting the content of the record.<sup>21</sup>

The information function of marital status registers is also carried out in a specific way. By virtue of the law, marital status registers are in general public and accessible to everyone. However, the law lays down certain specific rules

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<sup>17</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes und die Eheschließung, Reichsgesetzblatt, year 1875, pp. 23–40, Paragraph 15.

<sup>18</sup> T. Stawecki, *Rejestrzy publiczne. Funkcje instytucji*, Warszawa 2005, p. 176.

<sup>19</sup> *Ibidem*, p. 337.

<sup>20</sup> *Ibidem*, p. 339.

<sup>21</sup> *Ibidem*, p. 337.

determining which persons have access to the information contained in the registers and on what terms. At least since the introduction of the Napoleonic Code, it has been accepted in Western Europe that the information contained in marital status books and records should be protected against the unauthorized access of third parties.<sup>22</sup>

To a limited extent, we can also speak of the protective function of marital status records. This is based primarily on the fact that the books kept by the registry office constitute the sole evidence of the events recorded in them, and their incompatibility with an event may in principle only be proven by means of court proceedings.<sup>23</sup>

Marital status registration includes:

1. drawing up birth, marriage and death certificates,
2. entering marginal notes and footnotes,
3. drawing up a report on declarations aiming to change a person's marital status or surname.<sup>24</sup>

On the other hand, marital status registration acts include:

1. receiving declarations, statements and requests,
2. drawing up records and reports,
3. entering marginal notes and footnotes in the files,
4. issuing extracts and certificates.<sup>25</sup>

All the acts performed at the Registry Office can be divided into:

1. proper registration activities (drawing up of records and making other entries),
2. issuance of extracts and preparation of other documents constituting the basis for registration activities in other Registry Offices (e.g. notices of marginal note for authorities keeping books of secondary records),
3. compilation of lists intended for other administrative bodies (population registry, military registry, statistical bodies).<sup>26</sup> With regard to the Prussian period, it may be pointed out that, for instance, a decree of 27 January 1904, issued by the Minister for Justice and the Minister for Internal Affairs, instructed civil registrars to send directly to the guardianship courts in the districts where they were established reports on the death

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<sup>22</sup> Ibidem, pp. 339–340.

<sup>23</sup> Ibidem, p. 342.

<sup>24</sup> J. Litwin, *op. cit.*, p. 33.

<sup>25</sup> Ibidem, p. 42.

<sup>26</sup> Ibidem, p. 33.

of an illegitimate minor child and on the legitimacy of such a child as a result of the parents' marriage.<sup>27</sup>

4. handling and technical operations.<sup>28</sup>

From the point of view of the basis on which the record is drawn up, a distinction is made between records:

1. drawn up on the basis of a declaration by those obliged to do so by law (deed – registration of declaration),
2. drawn up on the basis of court decisions or administrative decisions (record – registration of a decision),
3. records drawn up on the basis of extracts from marital status records,
4. records drawn up ex officio on the basis of a court decision.<sup>29</sup>

## *2.2 Marital status registration in the Kingdom of Prussia*

Marital status registration in the Kingdom of Prussia, based on public registers meeting the criteria outlined in Chapter I, was carried out on the basis of the Law of 9 March 1874 on the certification of marital status and the form of solemnizing a marriage.<sup>30</sup> As the performance of the new system, introduced in this area as a kind of experiment<sup>31</sup> was considered satisfactory, the secular system of marital status registration was extended throughout the German Empire. Eventually, marital status registration in Prussia and throughout the Second Reich was based on the law of 6 February 1875 on the certification of marital status and marriage and the German Civil Code of 1896.<sup>32</sup> Both of these laws completely removed religious factors from the field of marriage law and marital status registration.<sup>33</sup>

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<sup>27</sup> Verfügung vom 27. Januar 1904, betreffend die Anzeigepflicht der Standesbeamten beim Vormundschaftsgericht hinsichtlich Minderjähriger, Ministerial-Blatt für die Preußische innere Verwaltung in den Königlich Preußischen Staaten, year 1904, pp. 30–31.

<sup>28</sup> J. Litwin, op. cit., p. 33.

<sup>29</sup> Ibidem, p. 35.

<sup>30</sup> Gesetz vom 9. März 1874 über die Beurkundung des Personenstandes und die Form der Eheschließung, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1874, pp. 95–109.

<sup>31</sup> J. Zdenka, *Urzędy stanu cywilnego województwa gdańskiego w latach 1874–1919*, Rocznik Gdański, Issue 2, 1983, p. 162.

<sup>32</sup> W. Hrynicky, *Organizacja rejestracji stanu cywilnego w Polsce w ujęciu historycznym*, Ius Novum, Issue 4, 2016, p. 362.

<sup>33</sup> J. Osuchowski, *Z dziejów prawa małżeńskiego i prawa o aktach stanu cywilnego w Polsce*, In: *Pro bono Reipublicae. Księga jubileuszowa Profesora Michała Pietrzaka*, ed. P. Borecki, A. Czohara, T. Zieliński, Warszawa 2009, p. 95.

## 2.2 Marital status registration in the Kingdom of Prussia

Under Prussian law, only civil registrars appointed by the state were authorised to draw up marital status records. Marital status districts were created by so-called higher administrative authorities. The districts covered from one to several communes (*Gutsbezirke*, *Landgemeinde*, *Stadt* and until 1928 also *Gutsbezirke*). However, larger municipalities could be divided into more marital status districts.<sup>34</sup> According to the law, the power to create districts was vested in the President of the region (*Regierungspräsident*).<sup>35</sup>

In each district, only one registrar and at least one deputy were appointed.<sup>36</sup> It was forbidden to combine these functions with ecclesiastical functions, the aim being to separate secular and ecclesiastical authority.<sup>37</sup> A superior administrative authority was empowered to appoint officials. In districts not exceeding one municipality, the registrar was to be the superior of that municipality (mayor, village leader or legal deputy). However, with the agreement of the superior authority, the superior may entrust the keeping of the registers to another official, and the municipal authority may decide to appoint separate civil registrars. Deputies were appointed in the same way as the civil registrar.<sup>38</sup> If a district encompassed several communes or municipalities, each of the supervisors of the communes or municipalities making up the district was obliged to assume the duties.<sup>39</sup> The same duties as the supervisors of the communes also applied to the supervisors of the manorial areas excluded from the communes.<sup>40</sup>

Civil registrars were supervised in the first instance by a lower administrative authority, which was the district office or administrative court, or in their absence by the registry office or the Supreme President. In the second instance, the

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<sup>34</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 2.

<sup>35</sup> Bekanntmachung vom 17. Oktober 1899, betreffend einige nach Einführung des Bürgerlichen Gesetzbuch eintretende Veränderungen in Angelegenheiten der Beurkundung des Personenstandes, Ministerial-Blatt für die Preußische innere Verwaltung in den Königlich Preußischen Staaten, year 1899, p. 189 and Verfügung vom 23. Februar 1910, betreffend die Genehmigung zur Bildung der Standesamtsbezirke, Bestellung der Standesbeamten und stellvertretenden Standesbeamten, Ministerial-Blatt für die Preußische innere Verwaltung in den Königlich Preußischen Staaten, year 1910, p. 53.

<sup>36</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraphs 1 and 3.

<sup>37</sup> F. Fidler, *Reichsgesetz über die Beurkundung des Personenstandes und die Eheschließung vom 6. Februar 1875*, Berlin 1912, p. 38.

<sup>38</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraphs 3 and 4.

<sup>39</sup> *Ibidem*, Paragraph 6.

<sup>40</sup> *Ibidem*, Paragraph 10.

Supreme President was the higher administrative authority.<sup>41</sup> The supervisory authorities had among other things the power to impose penalties on officials in the form of warnings, reprimands and fines of up to 100 marks.<sup>42</sup> The court of first instance with jurisdiction over the relevant district also held certain powers,<sup>43</sup> as it could, at the request of the parties, compel an offending official to perform official duties.<sup>44</sup>

Every civil registrar was required to keep three marital status registers: a register of births (*Geburtsregister*), a register of marriages (*Heiratsregister*), and a register of deaths (*Sterberegister*).<sup>45</sup> However, this did not exhaust his list of duties. The civil registrar was also committed to:

1. submit the registers for inspection on request,
2. make certified extracts and certificates from the registers and issue them,
3. make banns,
4. solemnize marriages,
5. authorise other civil registrars to solemnize marriages,
6. issue certificates of making entries in the register of births, banns announced, solemnized marriages, and entries in the register of deaths,
7. determine and collect fees and fines,
8. keep statistics on population movement,
9. provide legal assistance at the request of another civil registrar.<sup>46</sup>

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<sup>41</sup> Bekanntmachung der Minister des Innern und der Justiz vom 1. Dezember 1875, betreffend die Ausführung des Reichsgesetzes vom 6. Februar d. J. über die Beurkundung des Personenstandes und die Eheschließung, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1875, pp. 271–272.

<sup>42</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 11.

<sup>43</sup> The definition of the court of first instance was subject to change with subsequent reforms of the judiciary in the Kingdom of Prussia, see e.g. Bekanntmachung der Minister der Justiz und des Innern vom 1. Juli 1879, betreffend die Ausführung des Reichsgesetzes vom 6. Februar 1875 über die Beurkundung des Personenstandes und die Eheschließung, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1879, p. 154; Bekanntmachung des Textes des Gesetzes über die Angelegenheiten der freiwilligen Gerichtsbarkeit vom 17. Mai 1898, Reichsgesetzblatt, year 1898, pp. 771–809.

<sup>44</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 11.

<sup>45</sup> Ibidem, Paragraph 12.

<sup>46</sup> *Amtliches Handbuch für die Preußischen Standesbeamten und ihre Aufsichtsbehörden*, ed. Preußischen Ministerium des Innern, Berlin 1925, pp. 22–24, 129.



## 2.2 Marital status registration in the Kingdom of Prussia

According to the legislation in force, entries in the registers had to be made according to continuous numbering and without abbreviations. The empty spaces had to be crossed out and if there were any important figures, they had to be written in words. If an entry was made on the basis of a verbal notification, it should contain the following data:

1. day and place of entry,
2. specification of the persons who have appeared to the civil registrar,
3. note by the registrar stating that and on what basis he has confirmed the identity of the appearing persons,
4. note by the registrar to the effect that the entry has been delivered to the declarants and that they have accepted its contents,
5. signatures of the persons who reported the event and, if they cannot write or cannot sign, their handwritten signs or a description of the reasons why they cannot sign,
6. signature of the civil registrar.

If an entry was made on the basis of a written declaration, it must contain the place and date of entry and the signature of the civil registrar. Any additions, deletions or amendments had to be written in the margin and, like the record itself, signed.<sup>47</sup>

In addition to keeping the main register (*Hauptregister*), the civil registrar was obliged to keep lateral registers (*Nebenregister*), which contained copies of marital status records. The entries in the lateral registers had to be made on the same day and had to be certified with his signature. At the end of the calendar year, the main and side registers had to be closed and the number of entries in them had to be reported. The lateral register had then to be handed over to the supervisory authority for examination, which would then forward it to the court of first instance for safekeeping. If any entries were still made in the main register after the lateral register had been handed over, the civil registrar was obliged to send certified copies of them to the supervising authority, which had to have them entered in the side register by the competent court.<sup>48</sup>

As a rule, no fees were charged for keeping a marital status register and for related enquiries. However, a fee was payable for consulting the files and issuing certified copies. However, in official cases or when the concerned party was unable to pay, civil servants were obliged to issue copies and records for

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<sup>47</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 13.

<sup>48</sup> Ibidem, Paragraph 14.

inspection free of charge. As a general rule, any extracts must also contain any additions or corrections to the record.<sup>49</sup>

Marital status records were drawn up on the basis of an oral or written report made to the civil registrar in whose district the event occurred. For births, the law stipulated that the notification had to be made within seven days<sup>50</sup> from the day following the birth.<sup>51</sup> For the death, however, it was obligatory to report it the following day at the latest.<sup>52</sup> For each type of act, the law specified the person was required to make a report. In the case of births, they were obliged to report them:

1. bridal father,
2. midwife, present at the birth,
3. doctor present at the birth,
4. any other person present at the birth,;
5. mother, as soon as she is able to do so.

The subsequent person on the list was only obliged to report if the previous one was not present at the birth or could not make the report. The law provided for reporting through a third person who knew about the birth of the child from his own observation. Interestingly, this person did not have to be present at the birth at all.<sup>53</sup>

In the case of death, the head of the family was obliged to report the death, or if he or she was unable to do so or was not present, it became the responsibility of the person at whose place the death occurred. The death could then also be reported through a third party.<sup>54</sup>

A written notification was permitted if the birth or death occurred in public maternity facilities, hospitals, prisons, etc. In this case, the obligation to report rested with the head of the establishment or an official authorised by him.<sup>55</sup> If death was being investigated, the police were required to make a report after receiving a certificate of burial from the court or prosecutor's office.<sup>56</sup>

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<sup>49</sup> Ibidem, Paragraph 16.

<sup>50</sup> Ibidem, Paragraph 17.

<sup>51</sup> Erlass an die Königliche Regierung zu N. vom. 29 Oktober 1879, betreffend die Berechnung des Zeitraums für die Geburtsanzeigen beim Standesbeamten, Ministerial-Blatt für die Preußische innere Verwaltung in den Königlich Preußischen Staaten, year 1880, p. 26.

<sup>52</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 56.

<sup>53</sup> Ibidem, Paragraphs 18–19.

<sup>54</sup> Ibidem, Paragraphs 57–58.

<sup>55</sup> Ibidem, Paragraphs 20 and 58.

<sup>56</sup> Allgemeine Verfügung der Minister des Innern und der Justiz vom 21. Juni 1874, betreffend die nach §. März 1874 (Ges. Samml. S. 95) bei amtlich ermittelten Todesfällen den

## 2.2 Marital status registration in the Kingdom of Prussia

Making a report of death was also important because it was impossible to bury a corpse without the consent of the local police authority before the death was registered in the relevant death register.<sup>57</sup>

The statutory provisions also enumerated several special cases. A special situation was when a newborn baby was found. In this case, the report had to be made, at the latest on the following day, to the local police authority, which had to undertake an investigation. The local police authority was obliged to inform the district civil registrar of the result of the investigation. The purpose of the information was to establish the corresponding birth record.<sup>58</sup>

If the civil registrar had doubts about the veracity of the notification, he had to check it.<sup>59</sup> This examination was also necessary if the birth was reported more than three months after the birth. Making an entry in such a situation also required the approval of the supervisory authority,<sup>60</sup> that is in the village in the first instance – *landrat* – and the President of the region (*Regierungspräsident*) in second instance, and in the cities and towns respectively President of the region and the Minister of the Interior (*Minister des Innern*).<sup>61</sup>

The notification regulations were the implementation of several principles that were quite common. The territorial principle, according to which birth certificates are established at the place where the birth took place and not at the place of residence, still applies almost everywhere in the world. The registration principle, on the other hand, stipulates that the register is established on the basis of an application by one of the persons entitled to do so and that the register cannot be established *ex officio*. The principle of completeness was implemented by entering marginal notes and repeating legal actions and decisions of state bodies, which resulted in changes to particular elements of the deed.<sup>62</sup>

The procedure undertaken by the civil registrar in and during the drawing up of the marriage record was different. According to the Civil Code, the celebration of marriage should be preceded by banns that were valid for six months from the

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Standesbeamten zu machende schriftliche Mittheilung, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1875, p. 157.

<sup>57</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 60.

<sup>58</sup> Ibidem, Paragraphs 23–24.

<sup>59</sup> Ibidem, Paragraph 21.

<sup>60</sup> Ibidem, Paragraph 27.

<sup>61</sup> *Ustawodawstwo w sprawach stanu cywilnego obowiązujące na ziemiach zachodnich Rzeczpospolitej Polskiej*, ed. Tadeusz Zajączkowski, Poznań 1927, p. 26.

<sup>62</sup> J. Litwin, *op. cit.*, p. 24.

moment they were made. However, the bans could be dispensed with or waived in special cases.<sup>63</sup>

Prior to the bans being made, the civil registrar had to be provided with the following documents:

1. fiancées' birth certificates,
2. documents proving their nationality,
3. documents proving the place of residence during the preceding six months and the current address,
4. if the fiancés did not appear in person, proof of their consent.<sup>64</sup>

The documents mentioned in points 2 and 4 were necessary only if the civil registrar had doubts concerning the facts to which they referred.<sup>65</sup>

Other documents required by law for citizens were the following:

1. for a male under the age of 21, a decree of major age issued by the guardianship court,<sup>66</sup>
2. for a female under 16 years of age – a dispensation, granted by the competent district court,<sup>67</sup>
3. for persons with limited capacity to act – permission of a statutory deputy (if this was a guardian or protection officer, also a decree appointing the guardian or protection officer issued by the guardianship court) and permission of the guardianship court,<sup>68</sup>
4. for legitimate children under the age of 21, the father's consent or the death certificate of the father and the consent of the mother, or a certificate of permanent incapacity of the father to give his consent and the consent of the mother,<sup>69</sup>
5. for illegitimate children under the age of 21 – consent of the mother or the documents listed in point 4,<sup>70</sup>

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<sup>63</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Reichsgesetzblatt, year 1896, Paragraph 1316.

<sup>64</sup> Allgemeine Verfügung vom 2. Juni 1899, betreffend die Muster für eine Anmeldung des Aufgebots zur Eheschließung, Ministerial-Blatt für die Preußische innere Verwaltung in den Königlich Preußischen Staaten, year 1899, pp. 100–105.

<sup>65</sup> *Ustawodawstwo w sprawach stanu cywilnego obowiązujące na ziemiach...*, p. 39.

<sup>66</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Paragraph 1303.

<sup>67</sup> Ibidem, Paragraph 1303.

<sup>68</sup> Ibidem, Paragraph 1304.

<sup>69</sup> Ibidem, Paragraph 1305.

<sup>70</sup> Ibidem, Paragraph 1305.

## 2.2 Marital status registration in the Kingdom of Prussia

6. for adopted children under the age of 21 – adoption contract approved by the court, permission from the adopter or adoptee,<sup>71</sup>
7. for declared adults, before the age of 21 – if they did not have the documents listed in points 1–6, the permission of the guardianship court,<sup>72</sup>
8. for persons who were previously married:
  - a. if the spouse died, his/her document of death,
  - b. if the marriage has been dissolved or declared invalid – a court judgment,
  - c. if the spouse was declared dead – a judgment declaring the spouse dead,<sup>73</sup>
9. if the adopter wished to marry the adopted person or his descendant, a court-approved agreement terminating the adoption,<sup>74</sup>
10. for a spouse divorced on account of adultery, if he or she wished to marry an accomplice, a dispensation issued by the Minister of Justice,<sup>75</sup>
11. for a woman who wished to marry before the expiry of ten months from the dissolution or annulment of her previous marriage – proof that she gave birth during this period or a dispensation issued by the district court,<sup>76</sup>
12. parents who have a legitimate minor child or who are under their care – a certificate from the guardianship court that they have fulfilled the obligations set out in par. 1669 of the Civil Code,<sup>77</sup>
13. parents co-domiciled with a minor child or a child under their care – certification by the guardianship court that they have fulfilled the obligations set forth in para. 1493(2) of the Civil Code.<sup>78</sup>

For foreigners:

1. men and women:
  - 1) a certified certificate from the competent authority of their State that no impediment to marriage is known to that authority under the law of that State, or
  - 2) an exemption granted by the Minister of Justice,

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<sup>71</sup> Ibidem, Paragraph 1306.

<sup>72</sup> Ibidem, Paragraph 1308.

<sup>73</sup> Ibidem, Paragraphs 1309 and 1348.

<sup>74</sup> Ibidem, Paragraph 1311.

<sup>75</sup> Ibidem, Paragraph 1312.

<sup>76</sup> Ibidem, Paragraph 1313.

<sup>77</sup> Ibidem, Paragraph 1314.

<sup>78</sup> Ibidem.

2. men:

- 1) A certified certificate from the competent authority of his State concerning the transfer of the nationality to his wife and children, or
- 2) an exemption granted by the Minister of the Interior.<sup>79</sup>

The civil registrar was authorised to dispense with the production of these documents if the facts that they were intended to prove were known to him personally or were reliably proven in another way. He could also disregard certain inconsistencies in the documents, such as inconsistencies in the spelling of surnames or differences in the forenames if the identity of the concerned parties was proven in another way. It was also the civil servant's prerogative to take from the bride and groom affirmations, in lieu of an oath, in order to ascertain the truthfulness of facts which he considered to be insufficiently demonstrated by documents or other means of proof.<sup>80</sup>

The banns, on the other hand, should be posted for a period of two weeks in a place intended for the display of municipal notices, such as the town hall in:

1. in the commune or communes where the fiancées have their place of residence,
2. if one of the fiancés has their habitual residence outside his current residence, in the commune of their current residence,
3. if one of the fiancés has changed their place of residence within the previous six months, in the commune of their previous residence.

The banns displayed should include the first names and surnames, the status or profession and the place of residence of the fiancés and their parents.<sup>81</sup> The banns abroad were made by placing an ad in a newspaper published in the place where the banns were made. Exemption from this obligation required a certificate of no impediment to marriage issued by a competent authority of a neighbouring country.<sup>82</sup>

The competent authority to solemnize a marriage was the officer in whose district one of the fiancés had his or her residence or usual place of stay. Marriage could also be celebrated before another civil registrar. However, written authorisation from the competent civil registrar was necessary for this.<sup>83</sup>

The statutory provisions precisely defined the information content of the entries. Particular types of records should include:

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<sup>79</sup> Ibidem, Paragraph 1315.

<sup>80</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 45.

<sup>81</sup> Ibidem, Paragraph 46.

<sup>82</sup> Ibidem, Paragraph 47.

<sup>83</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Paragraphs 1320–1321.

## 2.2 Marital status registration in the Kingdom of Prussia

**Table 1.** Information content of marital status registers

No.	Birth register	Marriage register	Death register
1	First name and family name at birth, marital status or occupation and place of residence of the declarant	First names and family names at birth, age, status or occupation, place of birth and place of residence of the persons entering into marriage	First name and family name at birth, status or occupation and place of residence of the declarant
2	Place day and time of birth	First names and family names at birth, status or occupation and place of residence of parents	Place day and time of death
3	Sex of the child	First names and family names at birth, age, status or occupation and place of residence of the designated witnesses	First name and family name at birth, religion, age, status or occupation, place of residence and place of birth of the deceased
4	First names of the child	Declaration by persons entering into marriage	First names and family names at birth, status or occupation and place of residence of parents of the deceased (only if known)
5	First names, family names at birth, religion, status or profession and place of residence of the parents	Decision of the civil registrar	

Source: Gesetz über die Beurkundung des Personenstandes..., Paragraphs 22, 54, 59.

The entry of the birth record of a foundling child was of a special nature. This entry was to contain information on the time, place and circumstances in which the child was found, the condition and identifying marks of the objects and clothes found on the child, the marks on his or her body, his or her presumed age, sex, weight and the establishment or person to whom the child was entrusted. The name given to the child was also entered on the birth certificate.<sup>84</sup>

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<sup>84</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 24.

Information on the acknowledgment of an illegitimate child was also entered on the birth certificate. In order for this information to be entered, the acknowledgment had to be made before a civil registrar or in a court or notarial document.<sup>85</sup> In these cases, and in matrimonial cases, the court of first instance was competent.<sup>86</sup> Information found after the completion of the record or concerning a change in the marital status was also added to the record. Such information included, for instance, adoption or determination of the origin of a child after the record was established. However, a condition for drawing up a marginal note was that a document of evidential value was provided and attached to the interested party's request.<sup>87</sup>

If a marriage has been declared null and void, or if in a dispute concerning the existence or non-existence of a marriage between the parties it has been established that the marriage does not exist, if the marriage has been dissolved before the death of one of the spouses, or if the joint marital property ownership has been dissolved, this information must have been entered in the margin of the marriage record. If, after the dissolution of marriage, the joint marital property ownership was restored, this should be pointed out in the margin of the marriage certificate, if requested.<sup>88</sup>

The marital status record was also rectified by making a note in the margin of the record. The rectification could only be made against a court order.<sup>89</sup> The procedure for obtaining this order was divided between the court and administrative authority. The supervising authority of the marital status department initiated rectification proceedings at the request of the interested party or ex officio, heard the interested parties and, if necessary, summoned them to appear. It then established the facts of the case, which it communicated to the court. The court could make further enquiries and then order rectification by way of a final order. However, if the court did not wish to resolve the issues arising (for example right to use the surname, matrimonial descent) by means of an order, it could refer the applicant to court proceedings. In all other matters, the rules for non-procedural proceedings (*freiwillige Gerichtsbarkeit*) applied.

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<sup>85</sup> Ibidem, Paragraph 25.

<sup>86</sup> Ed. Heilfron, G. Pick, *Lehrbuch des Zivilprozeßrechts sowie des Verfahrens der Freiwilligen Gerichtsbarkeits*, Band 2, Mannheim, Berlin, Leipzig 1921, p. 94.

<sup>87</sup> Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes..., Paragraph 26.

<sup>88</sup> Ibidem, Paragraph 55.

<sup>89</sup> *Ustawodawstwo w sprawach stanu cywilnego obowiązujące na ziemiach...*, p. 181.



## 2.2 Marital status registration in the Kingdom of Prussia

An order granting the right could be challenged by way of an immediate appeal. However, it became effective only after it had become final.<sup>90</sup>

Apart from the maintenance of marital status registers, regulatory provisions required registrars to keep:

1. collective deed for each register,
2. alphabetical index of first names for each register,
3. index of first names,
4. index of banns,
5. index of fees due and collected.<sup>91</sup>

The collective file was to be kept for each register and each year separately. All official documents relating to the maintenance of the registers, and in particular written requests, reports, notices, documents served, orders of supervisory authorities and courts, reports drawn up by officials, and orders issued, were to be filed in the collective file. In short, all documents relating to the year in question.<sup>92</sup> As far as possible, the civil registrar should also keep a separate file for marriages solemnized abroad.<sup>93</sup>

Marital status registers were therefore kept separately for births, marriages and deaths. Separate files were also kept for each register, containing the documents which were the basis for the registration or which referred to it. Parallel to the main registers, side registers were also kept, which were copies of files. In smaller districts, the regulations allowed the main registers to be kept for several years in one book,<sup>94</sup> but this could not be done for the side registers, which were to be forwarded to the district courts every year.<sup>95</sup>

Technically, a register card should be 40.5 cm high and 25.5 cm wide. In the registers of births and deaths, one entry should be made on one page of the register. In marriage registers, the cards should be folded so that entries are made on two opposite pages. The side register differed from the main register by a formula at the end of the file text:

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<sup>90</sup> P. Siméon, *Handbuch zur Einführung in das Bürgerliche Gesetzbuch und seine Nebengesetze. Zweiter Band*, Berlin 1904, p. 224.

<sup>91</sup> Bekanntmachung vom 25. März, betreffend Vorschriften zur Ausführung des Gesetzes über die Beurkundung des Personenstandes und die Eheschließung, Reichsgesetzblatt, year 1899, Paragraph 23.

<sup>92</sup> *Ibidem*, Paragraph 22.

<sup>93</sup> *Ustawodawstwo w sprawach stanu cywilnego obowiązujące na ziemiach...*, p. 9.

<sup>94</sup> Bekanntmachung vom 25. März, betreffend Vorschriften zur Ausführung des Gesetzes über die Beurkundung..., Paragraph 5.

<sup>95</sup> *Ustawodawstwo w sprawach stanu cywilnego obowiązujące na ziemiach...*, p. 80.

Chapter 2. Marital status registers

Die Übereinstimmung mit dem Hauptregister beglaubigt

....., am ..... 19....

der Standesbeamte

.....<sup>96</sup>

The individual marital status registers were as follows:

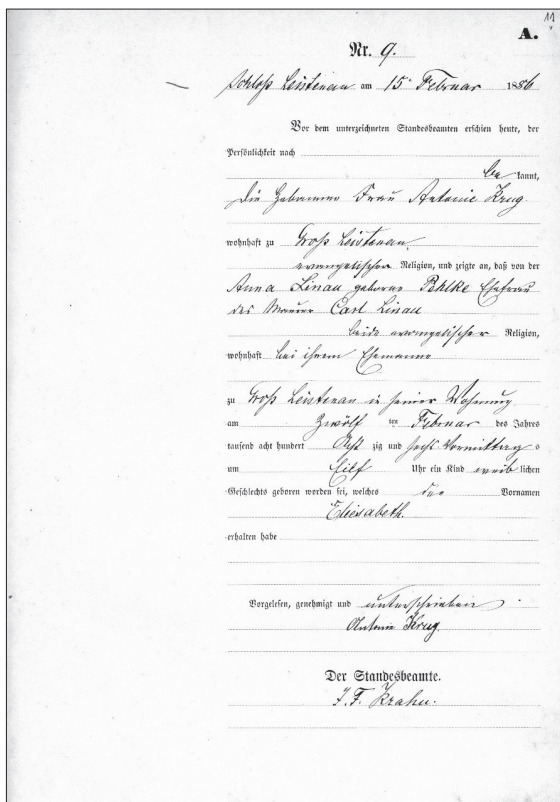


Figure 1. Page of the main register of births

State Archive in Toruń, 69/1171/0 Urząd Stanu Cywilnego Lisnowo-Zamek, reference number 1037, Geburts-Haupt-Register Schloss Leistenau für das Jahr 1886, 1886–1886.

<sup>96</sup> Das Reichsgesetz über die Beurkundung des Personenstandes und die Eheschließung (Personenstandsgesetz) vom 6. Februar 1875 in der seit 1924 geltenden Fassung nebst den vom Bundesrate im Jahre 1899 erlassenen Ausführungsvorschriften zum PStG (in der seit 1924 geltenden Fassung) mit den Formularen u. Musterbeispielen, ed. Preußischen Ministerium des Innern, Berlin 1925, p. 29.

2.2 Marital status registration in the Kingdom of Prussia

11

Nr. 9 C.

Neuberg, am 30. Juni 1906.

Vor dem unterzeichneten Standesbeamten erschien heute, der Persönlichkeit nach \_\_\_\_\_

bekannt,

Sir Nikolaus Miksał Greschickowski

wohnhaft in Neuberg

und zeigte an, daß seine Tochter Angelika  
Scheronaska, geboren Greschickowski;  
Lucja des Verstorbenen Jakob Scheronaski  
35 Jahre alt, Katholisch Religion,  
 wohnhaft in Lissa bei Dirschau, g. H. Neuberg  
 geboren zu Neuberg  
aus unbekannt

Witwe des Verstorbenen und ihres  
Eltern Witwens geborenen  
Kicczanaska  
 zu Neuberg

am 30. Juni ten Juni  
 des Jahres tausend neunhundert und sechst  
zur mittags um vier Uhr  
 verstorben sei.

Vorgelesen, genehmigt und gegen Verbleibensinhalt  
unterschriftet

X X X Handwritten des Nikolaus Greschickowski

Der Standesbeamte.  
Habe

Figure 2. Page of the main register of deaths

State Archive in Toruń, 69/1211/0 Urząd Stanu Cywilnego Przedzamcze Rogóžno, reference number 1037, Sterbe Haupt Register Vorschloss Roggenhausen für das Jahr 1906–1908, 1906–1908.

11

**B.**

Nr. 5.

Schloß Leistenau am Neß am zwanzigsten ten  
September tausend acht hundert achtzig und sechß.

Vor dem unterzeichneten Standesbeamten erschienen heute zum  
Zweck der Eheschließung:

1. der Katolik Joseph Malinowski

der Persönlichkeit nach Auf des Kaufmanns Schalkowski  
und Scharhorst rum kannt,  
Katholischer Religion, geboren den zweyfund-  
zwanzigsten August des Jahres tausend acht hundert  
zwei und seßzig zu Stegereaukau  
, wohnhaft zu Ruggenhausen

Sehn de 6. gr. hundertzwanzig ausgeborenen Katolik  
Johann Malinowski, mit seiner ausgeborenen  
Eltern Maria und geboren Georg, wohnhaft  
zu \_\_\_\_\_

2. die Katolik Rosalie Nejdrowski

der Persönlichkeit nach \_\_\_\_\_  
Se kannt,  
Katholischer Religion, geboren den zweyten  
September des Jahres tausend acht hundert  
zwei und seßzig zu Rippitzkau  
, wohnhaft zu Scharhorst

Tochter de 6. gr. hundertzwanzig ausgeborenen Katolik  
Joseph Nejdrowski und seiner Eltern  
Margaritta geborenen Karas. wohnhaft  
zu Scharhorst.

Figure 3. First page of the main register of marriages

State Archive in Toruń, 69/1171/0 Urząd Stanu Cywilnego Lisnowo-Zamek, reference number 1038, Heiraths-Haupt-Register Schloss Leistenau für das Jahr 1886, 1886-1886.

2.2 Marital status registration in the Kingdom of Prussia

Als Zeugen waren zugezogen und erschienen:

3. d. *der Pfarrermeister Jacob Stender*

der Persönlichkeit nach *Ja* kannt,

*knüpfzig* Jahre alt, wohnhaft zu *Schloß Leistenau*

4. *der Kupfer Franz Szindwarski*

der Persönlichkeit nach *Ja* kannt,

*knüpfzig* Jahre alt, wohnhaft zu *Schloß Leistenau*

In Gegenwart der Zeugen richtete der Standesbeamte an die Verlobten einzeln und nach einander die Frage: ob sie erklären, daß sie die Ehe mit einander eingehen wollen. Die Verlobten beantworteten diese Frage bejahend und erfolgte hierauf der Ausspruch des Standesbeamten, daß er sie nunmehr kraft des Gesetzes für rechtmäßig verbundene Eheleute erkläre.

Vorgelesen, genehmigt und *unterzeichnet*

*Handwritten signature of Josef Malinowski*

*Handwritten signature of Rozalia Kiejrowska*

*Handwritten signature of Stender*

*Handwritten signature of Szindwarski*

Der Standesbeamte.

*Handwritten signature of F. F. Mahu*

Figure 4. Second page of the main register of marriages

State Archive in Toruń, 69/1171/0 Urząd Stanu Cywilnego Lisnowo-Zamek, reference number 1038, Heiraths-Haupt-Register Schloss Leistenau für das Jahr 1886, 1886-1886.

## CHAPTER 3

# *Land and Building Tax Cadastre*

Another public register of an administrative nature kept in the Kingdom of Prussia was the cadastre of land and building tax kept by cadastral offices.<sup>1</sup> Let us first consider what a cadastre as such is in order to then look at the Prussian land and building tax cadastre.

### *3.1 General issues*

A cadastre (from the Latin *catastrum*) is, in the strict sense of the word, an accurate, usually official, description of the property in terms of its size, fertility and income, drawn up for the purpose of taxation.<sup>2</sup> Originally, however, in the times of Emperor Augustus, a cadastre meant a census of population, or, to be more precise, the very act of census.<sup>3</sup> Other definitions of a cadastre are given by Paweł Cupriak, who raises that:

*The cadastre is a survey on a map – a register of land, buildings and structures, serving as a basis for descriptions and plans, for marking real estates when establishing and keeping land and mortgage registers and for assessing taxes and other public benefits. [...] The cadastre may also be understood as a set of documents concerning real estate, which is established, maintained and updated by the state administration for the purpose of property taxation.<sup>4</sup>*

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<sup>1</sup> P. Haserodt, *Das Hauszinssteuerkataster*, Marburg 1926, p. 5.

<sup>2</sup> J. Stoksikówna, *Galicyski kataster gruntowy, jego geneza, dzieje i spuścizna aktowa*, Archeion, Issue 63, 1975, p. 165.

<sup>3</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, *Kataster gruntowy w Wielkopolsce – historia i teraźniejszość*, Przegląd Geodezyjny, Issue 11, 1995, p. 17.

<sup>4</sup> P. Cupriak, *Księga wieczysta a kataster nieruchomości*, Przegląd Geodezyjny, year 71, Issue 10, 1999, p. 16.

A cadastre may also be defined as a system in which cadastral information is recorded, which is information on land, buildings and premises, in terms of their location in space and their physical and legal characteristics.<sup>5</sup>

Cadastre is therefore in principle any spatial information system because the basic feature of such a system is assigning two groups of attributes to its objects. The first group are spatial attributes, while the second group are descriptive attributes. In every cadastre the location of facilities and their attributes are determined.<sup>6</sup>

Among the cadastral information systems one can distinguish:

1. cadastral systems, in which information is related to land parcels;
2. environmental information systems (natural information), in which certain physical, chemical, biological and other phenomena are presented, most often by distinguishing areas with uniform characteristics;
3. infrastructure information systems, in which descriptive information relates to structures and networks of engineering structures, e.g. communication, energy, water supply, sewerage, etc.<sup>7</sup> Another feature of the cadastre is that since its creation, it has served the function of tax collection. The fact that it is kept for this very purpose is evidenced even by the very names of the cadastres, such as the former Austrian land tax cadastre. This feature has survived until nowadays, among others, in the Polish register of land and buildings.<sup>8</sup>

The basic models of cadastre were formed in the 19th century, when the following were created: fiscal cadastre, legal cadastre and physical cadastre. These registers are aimed respectively at ensuring tax revenue from real estate ownership, securing real estate trade and planning and managing the real estate. The first type of cadastre to be introduced was the fiscal cadastre, the characteristic feature of which is its close connection with the tax system of the state it serves. For this purpose, real estate is valued by assessing its value or profitability. The established value constitutes the basis for taxation. A legal cadastre, as opposed to a fiscal one, aims at reflecting the legal status of a real estate, i.e. establishing its owner and registering rights to the real estate. Physical cadastre, on the other hand, separates fiscal and legal functions from the geodetic (spatial) cadastral base, which consists of maps and plans, as well as descriptions of real

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<sup>5</sup> R. Hycner, *Podstawy katastru*, Kraków 2004, p. 31.

<sup>6</sup> *Ibidem*, p. 42.

<sup>7</sup> J. Gaździcki, *Systemy informacji przestrzennej*, Warszawa 1990, p. 13.

<sup>8</sup> R. Hycner, *op. cit.*, p. 43.

property and objects composing it, and also data concerning the designation and use of the real property.<sup>9</sup>

Summing up the above, the cadastre may be classified as an administrative register, as it is kept by statutorily appointed public administration bodies, and as a subjective one, as it collects, first of all, information on land, buildings and premises, which constitute the basis for the designation of real property.<sup>10</sup> It was no different from the Prussian cadastre, which was kept by cadastral offices and contained information about land and buildings. At the same time, it can be pointed out that this cadastre was a fiscal cadastre because its basic function was to collect taxes by the State.

In the context of the cadastre, one can distinguish the concept of cadastral space, which can be divided according to two criteria: pragmatic and introspective. From the pragmatic point of view, the following subspaces can be distinguished:

1. objects (facilities),
2. subjects (persons),
3. cadastral relations.

The functional, introspective division, on the other hand, allows us to distinguish the following subspaces:

1. geometrical,
2. physical,
3. economic,
4. legal,
5. cadastral relations.

Geometric and physical subspaces are metric spaces, and a relatively accurate and relatively unambiguous description of objects is made in them, mainly using quantitative methods. This description is done by surveyors, builders and naturalists. These subspaces are standardised by technical regulations (standards), and for this reason, they have a common part with legal subspaces. In the economic sub-space, the economic characteristics of objects are described and their value is determined. The sub-space is normalized by regulations on accounting and finance. It partly overlaps with legal space. The laws of economics govern this subspace. On the other hand, the description of objects is done by

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<sup>9</sup> P. Cupriak, op. cit., p. 16.

<sup>10</sup> D. Felcenloben, *Pojęcie i funkcje katastru nieruchomości jako rejestru publicznego*, Przegląd Geodezyjny, Issue 11, 2008, p. 8.



**Table 2.** Sources of spatial data

Data sources	Source type	Data form	Data record
Terrain	Reality	Digital, analogue	Vector, drawing
Photogrammetric and remote sensing images and data	Registered model	Analogue, digital	Pictorial, drawing,
Graphical map	Processed model	Analogue	Drawing, pictorial
Numerical map	Processed model	Digital	Vector, drawing

Source: J. Gaździcki, *Systemy informacji przestrzennej*, Warszawa 1990, p. 94.

property appraisers, accountants, and financiers. Legal subspace, on the contrary, is a set of legal acts whose task is to standardize cadastral space.<sup>11</sup>

As specified above, the cadastre registers specific data about facilities contained therein. These data are of spatial and descriptive nature. Descriptive data come from inspection of a given object or other descriptive sources indicating, e.g., its value. For spatial data, the following sources can be identified:

In the first case mentioned in the table, the collected data are the result of direct geodetic measurements in the field. These are mainly digital data, leading to a vector model, e.g. in the form of field sketches. Direct measurements allow obtaining the highest possible accuracy. In the case of the Prussian cadastre, the data came from direct measurements and were obtained by using maps from previous measurements. On the other hand, a map in a traditional graphic, drawing or pictorial form is a processed model created as a result of using data from various sources. The numerical map specified in the table, saved as a vector or raster map, is also a processed model.<sup>12</sup>

Data collected in spatial information systems should meet the following characteristics:

1. Accuracy – this may be defined as closeness to the true value. This characteristic refers mainly to attributes that are quantities corresponding to interval or proportional scales.
2. Precision – the ability to represent a quantity accurately, expressed for example in terms of the number of digits in the notation of a number. Precision, therefore, is not the same as accuracy because data can be

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<sup>11</sup> Z. Adamczewski, *Kataster w czasie o przestrzeni: próba identyfikacji i predykcji*, Przegląd Geodezyjny, Issue 10, 1999, p. 4.

<sup>12</sup> J. Gaździcki, op. cit., p. 94.

precise due to its notation and, at the same time, not very precise because it deviates significantly from its true value.

3. Reiteration – mutual consistency of reiterated under specified conditions:
  - a. the recording of data at the input to the system or b. the presentation of data at the output from the system. Reiteration depends on errors which are not constant under accepted conditions.
4. Resolution – the ability to detect or distinguish quantities. Resolution is also referred to as the smallest distinguishable quantity, which may be a pixel or a coordinate counting unit in a digimeter.
5. Variability – the average time it takes for the value of an attribute to change in real life can be used as a measure of its variability.
6. Timeliness – the attribute is related to the time interval between the most recent change of the attribute value in the real world and the retrieval of the data from the system. The period of validity of a data in the system is the difference between the period of change of the value of the corresponding attribute in reality and the update time, consisting of the time of reaction to the change until the change is observed (measured) and the time of registration of the change until the change is entered into the system. The timeliness of data in the system depends on the variability of the corresponding attribute and the update processes, which may be performed either after each occurrence of a change (rolling update) or after a number of changes (periodic update in fixed or variable periods). The data is current between the time when a change is made to the system and the time when the next change is made to the value of the attribute.
7. Reliability – consistency, within the limits of acceptable measurement error, between the information derived from the system's data and the actual state at the time of data extraction. Lack of conformity may result from a lack of timeliness and all kinds of errors.
8. Accessibility – ease and speed with which data can be retrieved from the system, which may depend on the user and the type of data.
9. Completeness – the ratio between the number of data held in the system and the number of data it should contain. A distinction can be made between completeness in terms of area and content.
10. Relevance – the degree to which the information needs of the user of the system using the data are satisfied.
11. Cost – the cost of the data consists of the cost of obtaining, processing and delivering it to the user in a specified form.

### 3.2 Prussian cadastre of land and building tax

12. Value – the value of the information obtained by the system user, which can be determined by: a. The benefit of using the information obtained instead of and/or in addition to the information already possessed; b. The loss that the user might incur if the information from the system was not used.<sup>13</sup>

The remarks made in this subsection are also applicable to the Prussian cadastre. It should be remembered, however, that measurement technology, as well as estimation methods, stood at a much lower level than today. Therefore, not all of the above remarks fully reflect the 19th-century cadastre.

### *3.2 Prussian cadastre of land and building tax*

Turning to problems already directly related to the cadastre kept in Prussia, the process that led to its creation should first be highlighted.

In the 18th century in Prussia, land tax was paid exclusively by serfs using manor lands. Grange lands, on the other hand, were not subject to it. In 1785, a patent was issued that imposed the tax also on the nobility's land. In 1810, however, a patent was issued that unified the rules for assessing land tax based on measurements and land classification. It thus abolished the tax systems that had been in force before. In 1821, a law was issued on the division of communities with the abolition of servitudes. In 1823, a law was passed on the enfranchisement of peasants.<sup>14</sup>

First regulations on land measurement were introduced during the reign of the king Friedrich Wilhelm I. Regulations for the Kurmark, Neumark, Pomerania, and Magdeburg were introduced in 1720 and 1724.<sup>15</sup> In 1755, *Instruktion für die Land-Messer des Königreichs Preussen* came out, a measurement guideline

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<sup>13</sup> J. Gaździcki, op. cit., pp. 18–20.

<sup>14</sup> M. Mika, *Historia katastru polskiego*, Infrastruktura i ekologia terenów wiejskich, Issue 6, 2010, p. 79.

<sup>15</sup> These were: Die Instruktion für die Städtebauinspektoren der Kur- und Neumark, der Herzogtümer Magdeburg und Pommern, sowie des Fürstentums Halberstadt vom 26.09.1720; Die kabinettorder an den Oberbaudirektor Philipp Gerlach, die Städte der Kur- und Neumark zu kartieren und zu katastieren vom 29.11.1720 and Die Instruktion für die Bauinspektoren und Kondukteure (Beliehenen) zur Vermessung der Städte und Stadtäcker in der Kurmark vom 06.07.1724. See: R. Karsunke, *275 Jahre Preußisches Liegenschaftskataster*, Vermesung Brandenburg, Issue 1, 2000, pp. 38–39, also F. Reichert, *Anfänge der preußischen Katastervermessung im Herzogtum Magdeburg 1720–1726*, Zeitschrift für das öffentliche Vermessungswesen des Landes Sachsen-Anhalt, Issue 1, 2016, pp. 59–69.

intended for surveyors, who made boundary plans and measured and divided land within villages in the royal and private estates.<sup>16</sup> Another statute for surveyors was issued by King Friedrich Wilhelm on 28 May 1793 and applied to all land surveys carried out throughout the country.<sup>17</sup> The following nationwide provision was published on 29 April 1813.<sup>18</sup> It remained in force until 1858, when new regulations were promulgated. Like the previous ones, the new regulations did not introduce any significant changes in the work of surveyors.<sup>19</sup> In 1871 it was published again, as it was necessary to convert the measurements to metric measures introduced in 1868. These measures became the only measures in force throughout the country from 1 April 1872.<sup>20</sup>

It must be emphasized, however, that despite the issuance of national regulations, some of the Prussian provinces had separate surveying regulations, which introduced somewhat different technical and organisational requirements than the national legislation.<sup>21</sup> This was the case, for example, in South Prussia, where separate rules were issued in the years 1793 and 1800.<sup>22</sup> Apart from the national laws and regulations, the Prussian Ministry of the Interior also issued a number of minor supplements and explanations on the application of individual regulations. These documents came out either in the form of circulars addressed to all general commissions in the country or in the form of separate letters to the establishments concerned. As there were similar problems throughout the country, regulations began to be issued in collections intended for officials.<sup>23</sup> Thus, from the reign of Frederick II, the Prussian authorities started to strive for the dissemination of a tax cadastre. The earliest such tendencies occurred in the Cleve Regency (*Regierung Kleve*) and in Silesia.<sup>24</sup>

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<sup>16</sup> K. Górńska, *Pomiary gruntów w Wielkopolsce w końcu XVIII w. i w pierwszej połowie XIX w.*, In: *Studia i materiały do dziejów Wielkopolski i Pomorza*, Issue 2/1, 1956, p. 114.

<sup>17</sup> K. Górńska-Gońska, *Pomiary gruntowe w Wielkopolsce 1793–1861. Studia nad źródłami kartograficznymi Wielkopolski z okresu reform agrarnych*, Wrocław–Warszawa–Kraków, 1965, p. 23.

<sup>18</sup> B. Wittstock, *Rechts- und Verwaltungsvorschriften des Preussischen Grundsteuerkatasters 1820–1945*, Berlin 2001, pp. 33–34.

<sup>19</sup> *Ibidem*, pp. 64–65.

<sup>20</sup> *Ibidem*, p. 114.

<sup>21</sup> K. Górńska-Gońska, *op. cit.*, p. 23.

<sup>22</sup> *Ibidem*, p. 29.

<sup>23</sup> *Ibidem*, p. 16.

<sup>24</sup> G. Roczek, *Akta urzędów katastralnych w zasobie Archiwum Inowrocławskiego*, Archeion, Issue 84, 1988, p. 71.

What is important, when comparing the all-Prussian and locally binding regulations, it can be stated that at the turn of the 18th and 19th centuries, there was no visible development in the requirements concerning measurement technology and execution of plans. With minor variations, the guidelines of these regulations recommended the use of similar methods in land measurements.<sup>25</sup>

In the lands within the Prussian partition, the establishment of a land cadastre stemmed from the necessity to carry out tax reforms, which were initiated at the turn of the 18th and 19th centuries. They were intended to introduce uniform rules for the calculation of benefits instead of the different current systems for calculating and collecting benefits.<sup>26</sup> In Wielkopolska, top-down measurements organised by the state authorities were introduced in 1793. They were to be carried out solely for fiscal purposes and were connected with the incorporation of lands in the Second Partition of Poland.<sup>27</sup> When introducing their agrarian reforms, the Prussian authorities made widespread use of land surveying, which facilitated the planning of new ownership boundaries within the developed property. The plan made during the survey was reliable documentation of the new ownership status of individual land owners and users. Sometimes, the Prussian authorities also used special land surveys for fiscal purposes to determine the land tax proportional to the size and quality of the owned and used land.<sup>28</sup> After 1815 land measurements in Wielkopolska were made only for economic, settlement and estimation purposes. For this reason, although the surveying action remained under the general authority of the Regency, in reality, it was carried out by the General Commission (*Preußische Generalkommission*), the Land Credit System of the Grand Duchy of Poznań (*Landschaftlicher Kredit-Verein*) and the Forest Administration of the Poznań Regency. In September 1817, *General regulations for surveyors in Prussia*, in force since 1813, were introduced on the territory of the Poznań Regency.<sup>29</sup> The regulatory action carried out in the Grand Duchy of Poznań coincided with an increased demand for land measurements, taken on a mass scale for regulatory purposes in the 1830s and 1840s, and to a smaller extent in later years.<sup>30</sup>

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<sup>25</sup> K. Górską-Gołąska, op. cit., p. 71.

<sup>26</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, Katowice 2009, pp. 243–244.

<sup>27</sup> K. Górską-Gołąska, op. cit., p. 7.

<sup>28</sup> Ibidem, p. 19.

<sup>29</sup> K. Górską, op. cit., p. 133.

<sup>30</sup> K. Górską-Gołąska, op. cit., p. 20.

In the western provinces of Prussia in 1810, 1820 and 1848, attempts were made to reform the land tax. These attempts formed the basis for the law of 21 May 1861, which regulated the land tax differently. The law, which came into force in 1867, unified the tax collection in the whole state, where previously 114 types of agricultural tax had been in force. From then on, land tax and building tax were collected separately. This law was also the basis for the establishment of the cadastral authorities.<sup>31</sup>

Under the provisions of the acts of 21 May 1861 on the different stipulations for land tax<sup>32</sup> and on the introduction of general building tax,<sup>33</sup> a land tax cadastre was established. The provisions set a period of three and a half years for this task. It should therefore become operational on 1 January 1865.<sup>34</sup> Along with the law of 1861, the primary instruction on the regulation of land revenue calculation and the measurement instruction on the procedure for making cadastral maps were introduced.<sup>35</sup> This period was used to prepare measurement, registration and estimation documentation, which formed the basis for the start of the cadastral administration.<sup>36</sup> On 8 February 1867, the law on updating the cadastral survey was also adopted, which was the final step for establishing a permanent record of land and building tax.<sup>37</sup>

The creation of the cadastre ensured a stable and unified form of cadastral parcel inventory throughout Prussia for tax purposes and establishing the extent of ownership of parcels in terms of beneficial ownership and area.<sup>38</sup> Thus, uniform rules were introduced for assessing tax payments, covering all property owners, based on geodetic measurements and land classification, and valuation of the income derived from them. As a result of the 1872 law on unifying entries in land registers with cadastral data, the land tax cadastre was gradually transformed into a real estate cadastre.<sup>39</sup> In 1872, maps that were part of the cadastre were given

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<sup>31</sup> G. Roczek, op. cit., p. 71.

<sup>32</sup> Gesetz vom 21. Mai 1867, betreffend die anderweite Regelung der Grundsteuer, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1861, pp. 253–316.

<sup>33</sup> Gesetz vom 21. Mai 1861, betreffend die Einführung einer allgemeinen Gebaudesteuer, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1861, pp. 317–326.

<sup>34</sup> B. Wittstock, op. cit., p. 78.

<sup>35</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 17.

<sup>36</sup> G. Roczek, op. cit., p. 71.

<sup>37</sup> M. Mika, op. cit., p. 79.

<sup>38</sup> K. Kajda, *Kataster pruski jako wzór doskonałości*, Acta Scientiarum Polonorum. Geodesia et Descriptio Terrarum, year 2, Issue 1–2, 2003, p. 3.

<sup>39</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, p. 244.

evidentiary power in matters of adjudicating the course of property boundaries. In that period, the technical and cartographic parameters of cadastral maps were also specified.<sup>40</sup> In 1868 a triangulation grid was established, and in 1877 an instruction was issued on keeping a land and building cadastre.<sup>41</sup> It should be emphasised, however, that these were not the first steps towards triangulation in Prussia, as the first steps in this direction were taken in the second half of the 18th century.<sup>42</sup> In this context, two laws relating to the keeping of the cadastre should also be mentioned – The Act of 8 February 1867 on the definitive distribution of land taxes and the Act of 14 July 1893 on the abolition of direct state taxes.<sup>43</sup> Among the most important provisions aimed at improving the cadastral survey and surveying were those of 8 February 1879 on the obligation to relate surveying measurements to the country's triangulation network and 11 instructions on the keeping of the survey.<sup>44</sup>

Summarizing all the way to the establishment of the land and building tax cadastre in Prussia and giving it the final legal and technical shape, it should be noted that the land tax cadastre was established earliest in the western provinces of Prussia – in 1839 in Rhineland and Westphalia, the latest in the eastern provinces, that is West Prussia, East Prussia, Pomerania, the Grand Duchy of Posen, Silesia and Brandenburg.<sup>45</sup>

The institution of the land tax cadastre was subordinated to the Ministry of Finance. The cadastral offices of the second instance (*Katasrerbüro*) operated on the level of regencies (*Regierungsbezirk*) and in districts (*Landkreis*) – cadastral offices of the first instance (*Katasteramt*).<sup>46</sup> The Cadastral Offices (second instance) operated as part of the Regency Offices, and supervised the Cadastral Offices (first instance).<sup>47</sup> Originally notable officials, temporarily called *Fortschreibungsbeamte* or “file continuation officials”, were appointed in the individual districts. From 1867 onwards, they were called cadastral inspectors, and each of them had to be geometrically qualified and have had long practice

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<sup>40</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., pp. 17–18.

<sup>41</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, pp. 244–245.

<sup>42</sup> G. Krüger, J. Schnadt, *Die Entwicklung der geodätischen Grundlagen für die Kartographie und die Kartenwerke 1810–1945*, Vermessung Brandenburg, nr 2/2001, p. 27.

<sup>43</sup> G. Roczek, op. cit., pp. 71–72.

<sup>44</sup> M. Mika, op. cit., p. 79.

<sup>45</sup> J. Leopold, *Das Grund- und Gebäudesteuer-Kataster in Preußen und seine Verwendung für Staats und andere öffentliche Zwecke*, Berlin 1920, pp. 4–8.

<sup>46</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 17.

<sup>47</sup> G. Roczek, op. cit., p. 72.

in the profession. Appointments to the post were made directly by the Ministry. As a rule, the cadastral offices were staffed by one person, but the cadastral inspectors could, with the knowledge of the District Office, employ assistant clerks.<sup>48</sup> For the most part, the offices were located in the towns which were the seat of the Landratur. Cadastral offices initially covered only one area, but after 1887 they often covered several districts. The area covered by the cadastral offices was divided into districts (*Gemarkung*), usually encompassing one municipality or a separate manor area. Only occasionally, depending on the area and mutual location of land, villages and manor areas could be combined into one precinct.<sup>49</sup>

The main tasks of the cadastral offices were to carry out land measurements, draw up maps on their basis, classify incomes from land and buildings, and register changes that occurred. The cadastral offices were staffed by surveyors and draftsmen because the state authorities honoured only the work done by registry surveyors.<sup>50</sup>

On the other hand, the cadastral office was responsible for estimating the value of taxpayers' property and determining the amount of tax due. Initially it was called *Grund und Gebäudesteuerbüro*. Over the years, however, the name Kataster Bureau (*Katasterbüro*) became established. This body was headed by a cadastral inspector called the registry inspector. He controlled the activities of the cadastral offices.<sup>51</sup> If necessary, the Ministry of Finance could appoint two cadastral inspectors. In such a situation, one of them was entitled to the title of the first inspector, and the inspectors divided the area of the regency between themselves into cadastral inspection regions.<sup>52</sup> Apart from controlling the cadastral offices in the districts, the Kataster Bureau also carried out its own activities. It was the only one to exercise direct authority over the cadastral offices.<sup>53</sup>

Revision of the building cadastre was carried out with the participation of (district) estimating commissions. The district land assessment commissions were headed by district commissioners reporting to the General Commission, which in turn reported to the Ministry of Finance. If the county was divided due to significant soil differences, additional assessment districts were created, and

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<sup>48</sup> *Geschäftsanweisung für die Königlich Preußischen Katasterämter vom 16. März 1909*, Berlin 1909, pp. 3-7.

<sup>49</sup> G. Roczek, op. cit., pp. 73-74.

<sup>50</sup> J. Leopold, op. cit., pp. 71-73.

<sup>51</sup> *Geschäftsanweisung für die Königlich Preußischen Katasterämter vom 16. März 1909*, p. 9.

<sup>52</sup> G. Roczek, op. cit., p. 73.

<sup>53</sup> J. Leopold, op. cit., pp. 69-71.



separate estimation (assessment) commissions were appointed for each district. In this case, a complaint against the results of the classification was allowed, on which the General Commission took the final decision. The two-tier organisation of the cadastral authorities was aimed at a permanent control of the works carried out and proper protection of the registration and measurement documentation against possible destruction.<sup>54</sup>

When starting their work in 1861, the cadastral authorities gathered cartographic documentation of foreign origin, which had been prepared earlier for the needs of various contractors. In the following years, it was supplemented by supplementary maps. The most intensive work was carried out in the years 1861–1863, whereby the tasks were divided between the surveying authorities and the estimating commissions.<sup>55</sup> In establishing the cadastre, all available maps, such as separation maps, estate maps, etc., were used. During the initial work, the quality of maps used was of no importance. The collected materials covered approx. 87% of the country's area. As a result, only 13% of the area had to be covered by new measurements.<sup>56</sup> It should be emphasised that more accurate measurements were made during the execution of cadastral plans than during earlier actions. Obviously, this was the case only where they were drawn up independently of the regulatory plans. At that time also, many errors were detected, which had occurred during previous measurements.<sup>57</sup> If the same facility was subject to renewed regulation proceedings for which a new measurement was needed, a decision was made to take a new measurement or to use the old plan for a further action. In the case of minor changes and deviations from the actual state, a so-called copy was made instead of a new survey, but with all the changes that had occurred on the ground.<sup>58</sup>

Therefore, it should be emphasized that the weakness of the Prussian cadastre in the initial period was the use of materials (including private materials) from the previous measurement campaigns, which had different accuracy, scale and content. Their lack of verification with new measurements must have led to inaccuracies in the new public register.<sup>59</sup> The Prussian administration was aware of these defects; therefore, it ensured that the cadastre would gain

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<sup>54</sup> G. Roczek, op. cit., pp. 75–76.

<sup>55</sup> Ibidem, pp. 72–73.

<sup>56</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 17.

<sup>57</sup> K. Górską-Gońska, op. cit., p. 104.

<sup>58</sup> Ibidem, p. 96.

<sup>59</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, p. 244.

in value over time. The most important measures to improve the quality of cadastral work included:

1. The obligation to relate surveying measurements to the triangulation grid (1879);
2. Drawing up regulations on the use of uniform contractual signs for maps and field sketches (1879);
3. Introduction of eleven cadastral instructions, starting in 1877, on the keeping of land and building cadastre records in the surveying and official fields. These instructions were gradually supplemented and improved. They included supplementary surveying (Instruction II), renewal of the cadastral survey (Instruction VIII) and new surveying (Instruction IX).<sup>60</sup>

As in Austria, establishing a cadastre comprised several activities: measurement of land, incorporation of measurement results in the form of verbal and numerical descriptions, drawing up plans, land classification and income assessment.<sup>61</sup>

As a rule, every 15 years, the cadastre was revised, which consisted in updating by the surveyor the changes that had occurred in the properties, which the owners were required to report. The main purpose of the revision was to correct the previously assigned tax resulting from changes in the agricultural culture, income and acreage. Revisions were carried out in the years 1880, 1895, and 1910. Each period was opened with the introduction of subsequent volumes of certain types of books, which are discussed below.<sup>62</sup> Renewal of cadastral records consisted in the replacement of those maps, the processing and accuracy of which did not have any significant technical value. New maps were usually prepared as part of regulation and parceling works.<sup>63</sup>

Regardless of the cadastre revision, the building cadastre was permanently supplemented by cadastral offices based on village administrators' and town mayors' applications. Land assessments were carried out by specially appointed district committees supervised by the Department of Taxes, Domains and Forestry. The committees calculated the pure profit from land development, creating the so-called profit cadaster. The social factor was represented therein exclusively by landowners, and the results of their work were approved by the

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<sup>60</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 18.

<sup>61</sup> J. Stoksikówna, op. cit., p. 165.

<sup>62</sup> G. Roczek, op. cit., p. 74.

<sup>63</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 18.

superior committee. The classification could also be revised, but a complaint had to be filed beforehand.<sup>64</sup>

The Prussian and German cadastre was conducted on the basis of measurements of the objects of the cadastre, based on a grid determined in the adopted coordinate system. The aforementioned matrix was uniform due to its nature and degree of accuracy. This resulted, among other things, from the adopted principle of measurement, performed using an analytical method based on measurements with the application of appropriate and accurate measuring tools. This was one of the differences between the Prussian (German) and Austrian cadastres. Referring to the coordinate system used in the Prussian cadastre, it should be mentioned that:

1. As many as 40 separate coordinate systems were used, with the beginning of each system at the main point, with the geographical coordinates of that point determined;
2. The origin of the system was also a first-order triangulation point;
3. Rectangular coordinates were used in each system, and the system itself was oriented in the northern direction.

Moreover, there was an obligation to relate the cadastral grid points to the geodetic grid points, that is triangulation and polygonisation. This obligation was introduced in 1879 by the measurement instruction concerning the execution of cadastral measurements. It is worth mentioning here that Prussian and German instructions became a model for the creation of measurement instructions in other countries, including Poland.<sup>65</sup>

All measurements were conducted in order to draw up a cadastral survey consisting of a graphical part, that is a cadastral map, and a descriptive part. The survey was conducted for the cadastral municipality, which was an administrative unit headed by the village administrator and included several villages. The cadastral unit, on the other hand, was the precinct, which was a compact area of land covered by one measurement and presented on one cadastral map. Depending on its size or complexity, the cadastral map consisted of an appropriate number of map sheets.<sup>66</sup>

The cadastre was kept in the parcel system. On each map sheet, the numbering was carried out from the northwest to the southeast, following the numbering sequence. All cultivated plots were numbered first, followed by all

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<sup>64</sup> G. Roczek, *op. cit.*, pp. 74–75.

<sup>65</sup> R. Hycner, *op. cit.*, p. 24.

<sup>66</sup> *Ibidem.*

waterways. The last parcel number was underlined with one line and the last number of a publicly owned parcel with two lines.<sup>67</sup>

A parcel included a continuous area of land use and was owned by the same person. Parcels were identified by appropriate identifiers and a designation. The parcel number was a natural number or a fraction in the case of parcel division. The following designations were used:

1. 10 – cadastral plot number;
2. 30/10, 31/10, 32/10 – a division of plot 10 into three parts (the original plot number remained in the denominator, and the numerator corresponded to the consecutive free natural numbers;
3. 33/30(10), 34/30(10), 35/30(10) – division of plots 30/10 into three parts (the original plot numbers remained in the denominator, and the numerator corresponded to the consecutive natural free numbers).<sup>68</sup>

At the same time, a plot index was created according to the following hierarchy: precinct name, map sheet, and plot numbers under the following matrix article number listing all plot data. At the same time, a building book and an alphabetical list of owners were created. All changes were recorded on an ongoing basis in the plot index, matrix, land register, and cadastral maps.<sup>69</sup>

As mentioned, the cadastral survey included:

1. Cartographic part, which consisted of:
  - 1) cadastral map in unitary typeface concerning the precinct;
  - 2) cadastral map matrix;
2. Descriptive part, comprising the following documents:
  - 1) the master list of all parcels belonging to a single parcel holder, i.e. the so-called land tax matrix;
  - 2) building tax book, i.e. the list of buildings and parcels linked to the homestead by their function;
  - 3) parcel book, i.e. the list of all the parcels within the precinct, stating:
    - a. parcel number,
    - b. number of the main inventory article, or matrix article,
    - c. owner's name and surname,
    - d. use and class of parcel,
    - e. parcel area.

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<sup>67</sup> K. Kajda, op. cit., p. 11.

<sup>68</sup> R. Hycner, op. cit., p. 25.

<sup>69</sup> K. Kajda, op. cit., pp. 11–12.

Parcels in the cadastre were combined into plots, which roughly corresponded to the concept of land property.<sup>70</sup>

Cadastral sketches (*Feldbuch*) were the basis for establishing a cadastre. They consisted of a descriptive part and a cartographic part. The descriptive part contained similar data as matrices. The cartographic part was made directly in the field.<sup>71</sup> Cadastral maps (*Kartenblatt*) showed the course of cadastral plot borders, plot number, buildings and their numbers, street names, and type of use. According to the manner of preparation, maps are divided into original and first copies (*Urkarten*), pure copies of cadastral maps (*Reinkarten*) and supplementary maps (*Ergänzungskarten*).<sup>72</sup> An original map was produced by means of a pin copy of source maps (e.g. separation maps). In contrast, the primary map was a map created as a result of direct measurements in the field on the occasion of the establishment of a land cadastre.<sup>73</sup> The content of the maps included: external borders of the cadastral unit, ownership borders, land use borders including land classes, road borders, ditches, and other relevant markings, including marking of boundary stones and triangulation grid points.<sup>74</sup>

In order to draw up cadastral maps and registers, as a result of the survey process, the state of possession of the land was established. This activity led to the drawing up a boundary protocol concerning the establishment of plot boundaries on the land. Based on the plot report, a cadastral map was made at scales of 1:2500, 1:5000 or possibly 1:2000 and 1:4000. The measurements used an orthogonal method of detail measurement on the basis on a matrix called the linear relationship.<sup>75</sup>

The land tax matrix (*Mutterrolle*) was a land register in which the matrix article number, the land register number and the name of the owner were recorded. The descriptive part for parcel recorded the entry number, cadastral district, parcel location, map sheet, parcel number, area, type of use, date of entry, and, if any, parcels transferred to another article of the matrix.<sup>76</sup> A green stripe

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<sup>70</sup> R. Hycner, op. cit., p. 25.

<sup>71</sup> K. Kajda, op. cit., pp. 3–4.

<sup>72</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, p. 245.

<sup>73</sup> K. Kajda, op. cit., pp. 4–5.

<sup>74</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, p. 245.

<sup>75</sup> R. Hycner, op. cit., p. 25.

<sup>76</sup> H. Schütte, H. Schütte, *Kataster und Grundbuch in Preußen, ihre Verbindung und gegenseitige Berichtigung*, Ziegenhain 1936, p. 3.

Artikel №		Bezeichnung nach dem Hypothekenbuch																											
1.		2.		3.		4.		5.		6.		7.		8.		9.		10.		11.		12.		13.		14.		15.	
1565		1		28		102		29		10000		10000		10000		10000		10000		10000		10000		10000		10000		10000	

Figure 5. Land tax matrix form

The Brandenburg Main State Archive, 2.2.2.39 Katasterämter - Akten, reference number Rep. 39 Kataster ÜF 310, Priort, Kr. Osthavelland - Grundsteuer Mutterrolle, 1865-1933.

Gemeindebezirk		Bezeichnung nach dem Hypothekenbuch																	
1.		2.		3.		4.		5.		6.		7.		8.		9.		10.	
Greifenberg		3		301		301		10000		10000		10000		10000		10000		10000	

Figure 6. Land tax matrix copy form

State Archive in Szczecin, 65/129/0 Urząd Katastralny w Gryficach, reference number 776, Mutterrolle Gemeinde Greifenberg, 1865-1944.

was placed on the back of the book to distinguish it from the plot index.<sup>77</sup> In the nomenclature of archival records, one can also find the name *Liegenschaftsbuch* introduced due to the change of nomenclature used in Germany.

<sup>77</sup> K. Kajda, op. cit., pp. 5-6.

### 3.2 Prussian cadastre of land and building tax

Jahrgang der Formänderung.	Nummer des		Artikel der Mutterrolle.	Bezeichnung nach dem Hypothekenbuch.	Des Eigentümers	
	Kartenblatt.	Flächenabschnitt.			Name, Vorname und Stand.	Wohnort.
1.	2.	3.	4.	5.	6.	7.
1877	1	46			Öffentliche Gewässer	Marquardt
		17			Stollen, Hand, Pflanzgärten	Marquardt

Figure 7. Page 1 of the index of plots

The Brandenburg Main State Archive, 2.2.2.39 Katasterämter – Akten, reference number Rep. 39 Kataster ÜF 352, Marquardt, Kr. Osthavelland – Flurbuch mit Artikelverzeichnis, 1865–1933.

Bezeichnung der Lage, Separationsplannummer u. dgl. n.	Kulturart.	Stückl.	A. Steuerpflichtige Viegen-schaften.		B. Steuerfreie Viegen-schaften.		C. Wegen ihrer Benutzung zu öffentlichen Zwecken ertraglose Grundstücke.		D. Hofräume
			Flächeninhalt.	Reinertrag.	Flächeninhalt.	Reinertrag.	a. Land	b. Wasser	
8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
Lie. Wald	Graben								
Feld	Wiese	4	3,24 00	31 72				0 30 20	
			1 16 70 00					7 11	
			1 50 90	60 56					

Figure 8. Page 2 of the index of plots

The Brandenburg Main State Archive, 2.2.2.39 Katasterämter – Akten, reference number Rep. 39 Kataster ÜF 352, Marquardt, Kr. Osthavelland – Flurbuch mit Artikelverzeichnis, 1865–1933.

Land register (*Flurbuch*) is a list of plots of land appearing on individual map sheets in a relevant cadastral precinct.<sup>78</sup> The index contained the land register number, matrix article number, parcel area, use, matrix article number, parcel area, usable area, building register number (if there were buildings), and land category A, B, C, or D (location in town, in the country, agricultural land, or forest land). A page shows a table where the number of parcels within a land category was totalled. The index was also intended to prevent the duplication of parcel numbers during divisions and ensure the uniqueness of parcel numbering in a relevant cadastral precinct. It also recorded the year in which a parcel was

<sup>78</sup> Schönberger, *Der Katasterbeamte in Preußen*, Hoyerswerda 1902, p. 154.

Chapter 3. Land and Building Tax Cadastre

Nummer der Gebäude- steuerrolle.	Ortliche Bezeichnung der Festigung nach dem Namen der betr. Straße, des Platzes etc. und der Hausnummer (in den Städten) oder sonstige ortsübliche Be- zeichnung (auf dem plattien Lande).	Bezeich- nung nach dem Grund- buche.		Name, Vorname, Stand, Wohnort und Hausnummer des Eigentümers.	Bezeichnung der Festigung nach der Grundsteuer Mutterrolle			Flächen- inhalt.				
		Band	Blatt		Artikel.	Nummer		ha	a	qm		
						des Karten- blatts.	der Parzelle.					
1.	2.	3.	4.	5.	6.	7.	8.					
34 Fall	Grünhofstraße N. 50	1	12	Liese, Grifflan Larsenwiff	21	4	99	21	76			

Figure 9. Page 1 of the building tax register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Angermünde, reference number Rep. 5E AG Ang 425, Gebäudesteuerrolle des Gemeindebezirks Lützlow, 1872-1894.

Gattung der Gebäude und Bezeichnung der Hofräume und Hausgärten.		Jährlicher Nutzungswert.	Etats- jahr.	Gebäude- bezeichnung nach der bisherigen Gebäude- steuerrolle.	Nummer der Grund- Akten.	Eingetragen im Grundbuche.		Hinweisung auf die Nummer des Rollen- anhangs.		Bemerkungen.
Litt.		Mark		Nummer	Litt.	Band	Blatt	Jahrg.	No.	
9.		10.	11.	12.	13.	14.	15.	16.	17.	18.
a	Hofraum mit Gehöft	100	1875	34 a		11	12	98	4	Grifflan Liese

Figure 10. Page 2 of the building tax register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Angermünde, reference number Rep. 5E AG Ang 425, Gebäudesteuerrolle des Gemeindebezirks Lützlow, 1872-1894.

created and the year it was divided (if any). A red stripe with the name of the cadastral precinct was placed on the back of the book.<sup>79</sup>

The building tax register (*Gebäudesteuerrolle*) included a list and description of buildings, streets, land register, owner's name, matrix article, map card number, plot number, and parcel area. The descriptive part of the building included the number of buildings on the parcel, intended use of the building, location of the building, cubic capacity and a short description of the building construction technique.<sup>80</sup>

<sup>79</sup> K. Kajda, op. cit., pp. 6-7.

<sup>80</sup> H. Schütte, H. Schütte, op. cit., pp. 3-4.



**Katasterverwaltung.**

**Eigentumsveränderungsliste.**  
( nach § 52 a. a. O. )

Regierungsbezirk *Bromberg*  
Kreis *Bromberg*  
*Landwehr* bezirk *Suprawo*

Cone den 16<sup>ten</sup> Februar 1911

1. An  
das Königliche Katasteramt in *Bromberg*  
behuß Fortschreibung der bei dem unterzeichneten Amtsgerichte in das Grundbuch  
eingetragenen, umstehend angegebenen Eigentumsveränderung im Kataster.  
**Königliches Amtsgericht.**  
*guz. Russack*

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Liste Nr. *53* Eingegangen am *2.3.11* Rechnungsjahr *1911*  
den ten

2. Zurück an  
das Königliche Amtsgericht in  
nach erfolgter Ausfüllung der Spalten 13 und 14.  
**Königliches Katasteramt.**

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den ten

3. Zurück an  
das Königliche Katasteramt in  
nach bewirkter Notierung des Inhalts der Spalten 13 und 14.  
**Königliches Amtsgericht.**

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Katasteranweisung I. Muster III. zu § 16. Formular Nr. 3. Titel.

Figure 11. Page 1 of the list of changes of ownership

State Archive in Bydgoszcz, 6/100/0 Urząd Katastralny w Bydgoszczy, reference number 577, Eigentumsveränderungsliste, 1910-1916.

Chapter 3. Land and Building Tax Cadastre

Bezeichnung der Grundstücke und Gebäude, in betreff deren eine Eigentumsveränderung eingetreten ist.															
Verfände Nr.	Name des Gemeinde- oder selbständigen Gutsbezirks	Des Grundbuchs		Artikel der Mutterrolle	Des bisherigen Eigentümers Name, Vorname, Stand, Wohnort und Hausnummer	Gemarkung	Nummer		Der Gebäude-Steuerrolle	Bezeichnung der Lage	Kulturart oder nähere Bezeichnung der Parzelle, Gattung des Gebäudes	Flächeninhalt			Reinertrag der Siegen-schaften oder Aufzungs-wert der Gebäude Kr. 1/100 fl.
		Band	Blatt				No.	Litt.				Deft.	Wr	qm	
1	2	2a	3	4	5	6	7	8	9	10	11				
	<i>1. Hauptort</i>	<i>1</i>	<i>2</i>	<i>5</i>	<i>Ein. Kaufmänn. Hauptort, 1. 117. 716</i>					<i>Stadtpark</i>		<i>5. 218. 2</i>			

Figure 12. Page 2 of the list of changes of ownership

State Archive in Bydgoszcz, 6/100/0 Urząd Katastralny w Bydgoszczy, reference number 577, Eigentumsveränderungsliste, 1910–1916.

Seite .....												
Ein-ge-tragen in Grund-buch	Artikel der Mutterrolle	Der Gebäude-Steuerrolle		Des neuen Eigentümers Name, Vorname, Stand, Wohnort und Hausnummer	Bezeichnung des über die Eigentums-veränderung aufgenommenen Aktes	Tag der erfolgten Umschreibung in Grund-buch	Kauf- oder Erwerbspreis		Ist das Grundstück dem Des-münchens-renten-pflichtig?	Bemerkungen des Amts-gerichts	Eintragung des Katasteramts	
		No.	Litt.				für die bewegliche Inventar	Wert			Tag der erfolgten Sicherberichtigung	Bemerkungen
12	13	14	15	16	16	17	18	19	20	21	22	23
<i>1</i>	<i>2</i>	<i>5</i>		<i>Lautscheid</i>	<i>Auflassung 4/5. 2000</i>	<i>11. 11. 1911</i>				<i>21/11</i>		

Figure 13. Page 3 of the list of changes of ownership

State Archive in Bydgoszcz, 6/100/0 Urząd Katastralny w Bydgoszczy, reference number 577, Eigentumsveränderungsliste, 1910–1916.

The building register had a blue stripe on the back.<sup>81</sup> In 1910, the registers, which had become obsolete after the revision completed in that year, were replaced by sheets of the list of changes of ownership (*Eigentumsveränderungsliste*).<sup>82</sup> In the archival materials one can also come across the name *Gebäudebuch*, introduced in connection with the change of nomenclature used in Germany.

<sup>81</sup> K. Kajda, op. cit., p. 7.

<sup>82</sup> G. Roczek, op. cit., p. 82.

### 3.2 Prussian cadastre of land and building tax

Des Eigentümers		Nach der Grundsteuermutterrolle				Nach der Gebäudesteuerrolle						
Name, Vorname und Stand.	Wohnort und Hausnummer.	Nr. des Nr. titels.	Flächen- inhalt.	Rein- ertrag.	Jahres- betrag der Grund- steuer.	Nr. der Rolle.	Nutzungs- wert		Jahresbetrag der Gebäudesteuer			Jahr- gang der Fort- schrei- bung.
							Wohn- räume.	Be- wer- liche Räu- me.	zu 4 v. S.	zu 2 v. S.	zu- sammen.	
1	2	3	4	5	6	7	8	9	10	11	12	13
<i>Hofkammerer, Alexander, Hermann</i>	<i>W. Dorsow</i>	<i>104</i>	<i>2450</i>	<i>090</i>	<i>28</i>							<i>1894</i>

**Figure 14.** The summary land and building tax matrix

State Archive in Olsztyn, 42/753/0 Urząd Katastralny w Lubawie, reference number 716, Summarische Mutterrolle. Gemeindebezirk Dautsch Brosen, 1895–1944.

In addition to the land tax matrix and the building tax book for individual owners living in the district, the Cadastral Offices also kept a summary book for both types of taxes (*Summarische Mutterrolle*). These books were updated when owners changed and when new tax assessments were made.<sup>83</sup>

The alphabetical list of owners (*Das alphabetische Namenverzeichnis*) was a book containing an alphabetical list of local owners with information on the cadastral precinct, matrix article number, land register and lot numbers.<sup>84</sup>

The list of articles (*Artikelverzeichnis*) was created for individual communes and manorial areas. It contained all articles from the matrix listed in the order of the numbers and the designation from the land and mortgage register, along with the name, status and place of owner's residence.<sup>85</sup>

At the regency level, on the other hand, there were mainly files on the official procedure for surveying, land valuation records, and buildings collected in separate folders for each precinct entitled: *Verhandlungen über die Vermessung und Einschätzung Gebäudebeschreibungen, Grundsteuerverwaltung and Abschrift der Wiederholung zur Mutterrolle*. Among the cartographic materials stored there are: 1. first copies of district maps (*Gemarkungskarten*), 2. supplementary maps and

<sup>83</sup> State Archive in Olsztyn, 42/753/0 Urząd Katastralny w Lubawie, reference number 716, Summarische Mutterrolle Gemeindebezirk Dautsch Brosen, 1895–1944, State Archive in Bydgoszcz, 6/102/0 Urząd Katastralny w Szubinie, reference number 888, Katasterverwaltung – Summarische Mutterrolle, 1895–1922.

<sup>84</sup> H. Henning, *Kataster und Grundbuch*, Berlin 1961, p. 31.

<sup>85</sup> P. Auschrat, *Probleme der Archivierung von Katasterunterlagen in Brandenburg*, Potsdam 1997, p. 43.

Der Grund- und Gebäudeeigentümer Name, Vorname und Stand, Wohnort und Hausnummer		Artikel der Grundsteuer- mutterrolle	Nummer der Gebäude- steuervolle
1		2	3
<i>Bendlin, Konrad, Rentengüldenbesitzer</i>		<i>28</i>	<i>16</i>

Figure 15. Form of the alphabetical list of owners

State Archive in Koszalin, 26/258/0 Urząd Katastralny w Szczecinku, reference number 188, Artikelverzeichnis des Gemeindebezirk Alt Koprieben, 1860–1939.

Artikel der Mutterrolle	Bezeichnung nach dem Hypothekenbuch	D e s E i g e n t h ü m e r s	
		Name, Vorname und Stand.	Wohnort.
1.	2.	3.	4.
<i>11</i>	<i>Gr. 5 Gr. 74</i>	<i>Johanna, Wittwe, Hausfrau, Mundoll, Pabitz</i>	<i>Pabitz</i>

Figure 16. Form of the list of articles

State Archive in Koszalin, 26/258/0 Urząd Katastralny w Szczecinku, reference number 188, Artikelverzeichnis des Gemeindebezirk Alt Koprieben, 1860–1939.

3. field sketches of new measurements. Some materials, especially cartographic ones, were kept doubly, i.e. in the cadastral office at the regency and in the district cadastral office.<sup>86</sup>

The land registers (*Grundbuch*) had direct links to the cadastre. This relationship was expressed primarily in the bilateral dependence of the two systems. The cadastral office could not make any changes to the legal status of real estate in its records without their prior disclosure in the land registers. Similarly, changes concerning the physical description and identification data of the property must be certified by the cadastral office before being disclosed in the land register. The data disclosed in the cadastre and the land register were thus

<sup>86</sup> G. Roczek, op. cit., pp. 81–82.

### 3.2 Prussian cadastre of land and building tax

subject to strict correlation.<sup>87</sup> The structure of the Prussian cadastre, in a broader sense, therefore, was a set of books interconnected by providing some common information in all books that made up the cadastre and supplemented by land books. For example, knowing the number of a land register, one could find information on a parcel in it, and vice versa, having access to the descriptive part of the cadastre, one could get to the land register. The cadastre along with the land register thus formed coherent information and tax system.<sup>88</sup> The problem of communication between these registers will be discussed in more detail in the chapter dedicated to the system of public registers.

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<sup>87</sup> J. Leopold, *Die Veränderungen des Eigentums an Grundstücken in Preußen und ihre Fortschreibung im Kataster unter besonderer Berücksichtigung des Wassergesetzes vom 13. April 1913*, pp. 17–18.

<sup>88</sup> K. Kajda, *op. cit.*, p. 3.

## CHAPTER 4

# *Registers kept by the Patent Office*

Apart from the registry and cadastral offices, the Patent Office in Berlin was the institution responsible for maintaining public administrative registers in Prussia. This office was responsible for maintaining three registers: the register of utility models, the register of patents and the register of trademarks. These registers will be characterised below.

### *4.1 Register of utility models*

In the Kingdom of Prussia, two design registers were kept as public registers. The register for designs of artistic significance was held from 1876 by the courts responsible for keeping the commercial register.<sup>1</sup> In 1891 a register of utility models (*die Rolle für Gebrauchsmuster*) was established and kept by the Patent Office. Only designs of working tools, utilitarian objects or parts thereof could be registered therein, provided they served the purpose of work or utility by means of a new design, arrangement or device.<sup>2</sup>

For the purpose of keeping the register, a special office was set up at the Patent Office (*Kaiserliches Patentamt*), headed by an official appointed by the Reich Chancellor. This official had to be legally qualified.<sup>3</sup>

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<sup>1</sup> Gesetz vom 11. Januar 1876, betreffend das Urheberrecht an Mustern und Modellen, Reichsgesetzblatt, year 1876, pp. 11–14, Paragraph 9.

<sup>2</sup> Gesetz vom 1. Juni 1891, betreffend den Schutz von Gebrauchsmustern, Reichsgesetzblatt, year 1891, Paragraph 1.

<sup>3</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes vom 7. April 1891 und des Gesetzes, betreffend den Schutz von Gebrauchsmustern, vom 1. Juni 1891, Reichsgesetzblatt, year 1891, pp. 349–355, Paragraph 19.

#### 4.1 Register of utility models

The application for a design had to be made in writing. The application had to specify under which name the design was to be registered and what new design or device would serve a practical purpose. Each application also had to be accompanied by reproduction or illustration of the model. Unlike court registers, registration with the Patent Office required payment of a fee of 15 marks for each design applied for.<sup>4</sup> Each incoming application was marked with a consecutive number, a company number and a date. If two cases were filed on the same day, the one with the lower consecutive number was considered earlier.<sup>5</sup>

The following data had to be included in the application:

1. Full name, for women also the marital status and family name at birth, the place of residence or the registered office of the applicant, in the case of larger towns also the street name and house number, and for foreign towns also the country and district. The information given in the application had to clearly state whether a natural person, a company, a business owner in its civil name or a firm is applying for design registration;
2. Designation to be registered and published;
3. Designation of a new design or device to serve the purpose of the work or application;
4. Application for registration of the design in the Register of Utility Models;
5. Notification of payment of the registration fee;
6. List of annexes, with their number and contents;
7. If the applicant has appointed an attorney, the person, professional position and place of residence of the attorney and the text of the power of attorney in the form of an annex;
8. If several persons have submitted the application without appointing a representative, name of the person to whom official communications must be addressed;
9. Signature of the applicant(s) or representative.<sup>6</sup>

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<sup>4</sup> J. Bachem, *Staatslexikon. Vierter Band*, Freiburg im Breisgau, 1911, p. 34.

<sup>5</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 27.

<sup>6</sup> Deutsches Patentgesetz vom 7. April 1891 nebst der Verordnung, betr. das Verfügungsverfahren bei dem Reichsgericht, dem Gesetz, betr. die Patentanwälte und den Reichsgesetzen, betr. den Schutz von Gebrauchsmustern, Schutz der Waarenbezeichnungen, Schutz von Erfindungen, Mustern und Warenzeichen auf Ausstellungen und den Ausführungsbestimmungen dazu, ed. Sanftenberg, Leipzig 1912, p. 79 and Gesetze über das Patent-, Gebrauchsmuster- und Warenzeichenrecht nebst den Ausführungsbestimmungen dazu, ed. Sanftenberg, Leipzig 1932, pp. 81–82.

If the application complied with the requirements established by law and the patent office, an entry was made in the Register of Utility Models. This entry included the surname and residence of the applicant and the date the application was filed. Upon application, changes concerning the registered person were also recorded.<sup>7</sup> The register also contained the surname and domicile of the representative appointed to represent the person wishing to be protected who was not domiciled in Germany.<sup>8</sup> Any changes concerning a representative could be registered in the register, but had to be notified in the form of a document.<sup>9</sup>

The content of the entry in the register included the following data:

1. Model designation;
2. Family name and domicile of the applicant;
3. Family name and domicile of the representative of the foreign applicant;
4. Filing time;
5. Changes in the person of the applicant or representative;
6. Extension of time of protection;
7. Cancellation of an entry.<sup>10</sup>

The register was public, as evidenced by the publication of entries in the *Deutscher Reichsanzeiger* and the right of every person to have free access to the register.<sup>11</sup> Moreover, the person making the entry received a copy of the entry.<sup>12</sup> The Patent Office could also, at its discretion, issue copies and extracts of documents submitted to it and of proceedings pending before it to any person, provided that the law did not restrict access to them. The issue of documents was chargeable.<sup>13</sup>

As a result of registration, the registered person was vested with the exclusive right to reproduce the design for commercial purposes and to market, display or use the apparatus and articles resulting from the reproduction.<sup>14</sup> If a design was registered, but it was proven that the registered design infringed

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<sup>7</sup> Gesetz vom 1. Juni 1891, betreffend den Schutz von Gebrauchsmustern, Paragraph 3.

<sup>8</sup> Ibidem, Paragraph 13.

<sup>9</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 22.

<sup>10</sup> J. Neuberg, Gesetz, betreffend das Urheberrecht an Mustern und Modellen und Gesetz, betreffend den Schutz von Gebrauchsmustern nebst den zu beiden Gesetzen ergangenen Ausführungsverordnungen und abgeschlossenen internationalen Verträgen, Berlin 1911, p. 88.

<sup>11</sup> Gesetz vom 1. Juni 1891, betreffend den Schutz von Gebrauchsmustern, Paragraph 3.

<sup>12</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 23.

<sup>13</sup> Ibidem, Paragraph 29.

<sup>14</sup> Gesetz vom 1. Juni 1891, betreffend den Schutz von Gebrauchsmustern, Paragraph 4.



#### 4.2 Patent register

the rights of the persons whose designs had been registered earlier or it was not an original design, the infringer as well as any other person had the right to request the cancellation of the right of protection.<sup>15</sup> On the other hand, the right of protection acquired through registration passed to the heirs and could be transferred to other persons in a limited or unlimited manner by agreement or by a distribution of the property upon death.<sup>16</sup> The protection period was 3 years. It could be extended by another 3 years if a fee of 60 marks was paid before the end of the protection period. Protection could be terminated before the end of the protection period at the request of the concerned party. In such a case, information about the termination of protection was published in the *Deutscher Reichsanzeiger*.<sup>17</sup> If no return of the model was requested within 4 years after termination of protection, the President of the Patent Office acquired the right to dispose of it.<sup>18</sup>

#### 4.2 Patent register

Apart from the register of utility models, the Patent Office also kept a register of granted patents (*Patentregister*). This register was created together with the office itself by the Patent Act of 1877,<sup>19</sup> amended by the Patent Act of 1891. The register records patents granted for new inventions authorizing their commercial use. It is worth mentioning that patents were not granted for inventions, the use of which would be contrary to law or morality, and concerning foodstuffs, stimulants, medicines and substances produced by chemical methods unless the inventions concerned the manner of producing such objects.<sup>20</sup>

The register recorded the subject matter and duration of patents granted, the names and residences of patent holders and their attorneys. It also recorded the change of the patentee and his/her attorney. The register also recorded the commencement, lapse, declaration of invalidity and revocation of patents.<sup>21</sup>

An entry in the register was made on the basis of a written application, including a request for granting a patent and a specification of the subject matter to be protected by the patent. The application also had to be accompanied by

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<sup>15</sup> Ibidem, Paragraph 6.

<sup>16</sup> Ibidem, Paragraph 7.

<sup>17</sup> Ibidem, Paragraph 8.

<sup>18</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 24.

<sup>19</sup> Patentgesetz vom 25. Mai 1877, Reichsgesetzblatt, year 1877, pp. 501–510.

<sup>20</sup> Patentgesetz vom 7. April 1891, Reichsgesetzblatt, year 1891, pp. 79–90, Paragraph 1.

<sup>21</sup> Ibidem, Paragraph 19.

a description of the invention highlighting the possibility of the invention being used by others and an indication of the subject matter to be protected by the patent. In addition, necessary drawings, illustrations, models and samples had to be enclosed. The filing of the application entailed the payment of a fee of 20 marks.<sup>22</sup>

According to the specific rules established by the Patent Office, the application had to contain the following details:

1. Full name, and for women also the marital status and family name at birth, of the applicant's residence or registered office, for larger localities also the street name and house number. For foreign towns, the country and district must also be specified. The particulars also had to make it clear whether the application for registration is filed by a natural person, a company, a business owner in his civil name or a firm;
2. Designation of the invention suitable for publication;
3. Statement that a patent for the invention is being applied for. For an application for a supplementary patent, the earlier patent had to be identified by its number and subject matter or the earlier application by subject matter and number;
4. Information that the filing fee has been paid;
5. List of attachments with their number and contents;
6. If the applicant has appointed an attorney, designation of the person, professional position and place of residence of the attorney and the text of the power of attorney as an annex;
7. If several persons have submitted the application without appointing a common representative, designation of the person to whom the official orders are to be issued;
8. Signature of the applicant(s) or representative(s).<sup>23</sup>

Each incoming application was marked with a consecutive number, a company number and a date. If two cases were filed on the same day, the one with the lower consecutive number was considered earlier.<sup>24</sup>

The application was examined by an employee of the Applications Department. If the application did not meet the requirements, the applicant was

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<sup>22</sup> Ibidem, Paragraph 20.

<sup>23</sup> April 1891 nebst der Verordnung, betr. das Verordnungsverfahren bei dem Reichsgericht..., p. 70 and Gesetze über das Patent-, Gebrauchsmuster- und Warenzeichenrecht nebst den Ausführungsbestimmungen dazu, pp. 69–70.

<sup>24</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 27.

#### 4.2 Patent register

called upon to supplement the deficiencies and was given a deadline by which it had to do so. Moreover, the application was subject to preliminary examination as to whether the invention was patentable. If it was found that the invention was not patentable, the applicant was informed thereof and was obliged to reply to the preliminary notification within the prescribed time limit; otherwise, the application would be withdrawn. If a reply was positive, the Department made the final decision on granting the patent.<sup>25</sup>

In the course of the preliminary examination, as well as in the period preceding the granting of the application, it was possible to summon and hear the interested parties, examine witnesses and experts and conduct other examinations necessary to clarify the case.<sup>26</sup>

The register of patents, just like the register of designs, was public. Entries made in it were published in the *Deutscher Reichsanzeiger* and the official gazette. In addition to the contents of the notices, essential parts of the descriptions and drawings were also published in the official gazette (provided they could be publicly viewed).<sup>27</sup> Publication outside Berlin could also be made and could be postponed for up to six months.<sup>28</sup> Moreover, any person had the right to inspect the register and the descriptions, drawings, models and designs on the basis of which patents were granted. The only exceptions were patents granted for army or navy purposes. In this case, access to the documents was restricted.<sup>29</sup> Neither an entry in the register nor publication was made.<sup>30</sup> The Patent Office could also, at its discretion, issue copies and extracts of documents submitted to it and of proceedings pending before it to any person, provided that the law did not restrict access to them. The issue of documents was chargeable.<sup>31</sup>

The first annual fee for the patent right had to be paid within two months of publication. Failure to pay the fee resulted in the withdrawal of the application. During this period, opposition to the granting of a patent could also be filed, which had to be made in writing and duly substantiated. The grounds had to show that the invention was unpatentable or that the applicant was not entitled to a patent. After the expiry of the time limit, the Patent Office decided to grant the patent.<sup>32</sup>

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<sup>25</sup> Patentgesetz vom 7. April 1891, Paragraph 21.

<sup>26</sup> Ibidem, Paragraph 25.

<sup>27</sup> Ibidem, Paragraph 19.

<sup>28</sup> Ibidem, Paragraph 23.

<sup>29</sup> Ibidem, Paragraph 19.

<sup>30</sup> Ibidem, Paragraph 23.

<sup>31</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 29.

<sup>32</sup> Patentgesetz vom 7. April 1891, Paragraph 24.

If a patent was granted, its duration was 15 years from the day following the filing of the application.<sup>33</sup>

The registration could be cancelled at the owner's request and, in certain cases, ex officio: if the owner died, if he was not domiciled in Germany or if he was restricted from disposing of his property by a court decision or if it became apparent after the registration that the registration was inadmissible.<sup>34</sup>

In principle, both registers, i.e. the register of patents and the register of utility models, served the same purpose. However, the registration procedure for the design register was much more simplified, which on the other hand was reflected in a much shorter period of protection.

### *4.3 Trade mark register*

The Trade Mark Register (*Zeichenrolle*), third public register kept by the Patent Office was created by the Act of 12 May 1894,<sup>35</sup> which was uniform throughout the Reich.<sup>36</sup> The Trade Mark Register superseded the Trade Mark Register for companies registered with it, which had been kept as part of the commercial register since 1874.<sup>37</sup>

An entry in the register was made on the basis of a written application which had to contain, among others, the name of the company using the registered sign, a list of goods for which it was intended and its clear representation and description, if necessary. Detailed regulations in this respect were specified by the Patent Office.<sup>38</sup>

The following data had to be included in the application:

1. Full name, for women also the marital status and family name at birth, the place of residence or registered office of the applicant, in the case of larger towns also the street name and house number, and for foreign towns also the country and district. The information entered in the application had

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<sup>33</sup> Ibidem, Paragraph 7.

<sup>34</sup> R. Stephan, R. Lutter, *Patentgesetz vom 7. April 1891. Nebst Ausführungsbestimmungen, völkerrechtlichen Verträgen und Patentanwaltsgesetz unter eingehender Berücksichtigung der Rechtsprechung des Reichsgerichts und der Praxis des Patentamts*, Berlin 1908, p. 338.

<sup>35</sup> Gesetz zum Schutz der Waarenbezeichnungen vom 12. Mai 1894, Reichsgesetzblatt, year 1894, pp. 441–448.

<sup>36</sup> Ibidem, Paragraph 2.

<sup>37</sup> Gesetz über Markenschutz vom 30. November 1874, Reichsgesetzblatt, year 1874, pp. 143–146.

<sup>38</sup> Gesetz zum Schutz der Waarenbezeichnungen vom 12. Mai 1894, Paragraph 2.

### 4.3 Trade mark register

- to clearly state whether a natural person, a company, a business owner in its civil name or a firm is applying for design registration;
2. Company name in which the mark is to be used (for association marks, this reference was omitted);
  3. Application for registration of the trade mark in the trade mark register;
  4. Notification of payment of the registration fee;
  5. List of annexes, with their number and contents;
  6. If the applicant has appointed an attorney, the person, professional position and place of residence of the attorney and the text of the power of attorney in the form of an annex;
  7. If several persons have submitted the application without appointing a representative, the name of the person to whom official communications must be addressed;
  8. Signature of the applicant(s) or representative.<sup>39</sup>

The register, however, contained:

1. Date of receipt of the application;
2. Data accompanying the application;
3. Name and residence of the owner of the mark and his representative, if any, and any change in the person, name or residence of the owner or representative;
4. Date of renewal of the application;
5. Date of cancellation of the mark.<sup>40</sup>

The person applying for registration received a confirmation of the registration.<sup>41</sup>

The register was open to the public. Moreover, the Patent Office published every entry and cancellation made in the Register and periodically a list of marks entered and cancelled within a certain period of time.<sup>42</sup>

The Patent Office assessed whether the marks to be registered were not previously registered for the same goods in the trade mark register kept under current or earlier legislation. If it found such a match, it had to notify the owner,

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<sup>39</sup> Deutsches Patentgesetz vom 7. April 1891 nebst der Verordnung, betr. das Verfahrensverfahren bei dem Reichsgericht..., p. 85 and Gesetze über das Patent-, Gebrauchsmuster- und Warenzeichenrecht nebst den Ausführungsbestimmungen dazu, pp. 89–90.

<sup>40</sup> Gesetz zum Schutz der Waarenbezeichnungen vom 12. Mai 1894, Paragraph 3.

<sup>41</sup> Verordnung vom 30. Juni 1894 zur Ausführung des Gesetzes zum Schutz der Warenbezeichnungen vom 12. Mai 1894 und das Gesetz, betr. dem Schutz von Gebrauchsmustern, vom 1. Juni 1891, Reichsgesetzblatt, year 1894, pp. 495–497.

<sup>42</sup> Gesetz zum Schutz der Waarenbezeichnungen vom 12. Mai 1894, Paragraph 3.

who was entitled to file an opposition. If the proprietor did not do so within one month of receiving the information, the Office should register the trade mark.<sup>43</sup> If the marks were determined to be identical, the Patent Office refused registration.<sup>44</sup>

The right and the protection of the trade mark were transferred to the heirs or could be transferred to others by agreement or decree of the deceased. Importantly, the right could only be transferred to another person with the enterprise to which the trade mark belonged. The transfer was registered in the Trade Mark Register at the request of the successor in title, subject to the presentation of the consent of the authorised person in the form of a document. If the authorised person was deceased, proof of succession had to be provided. As long as the transfer had not been entered in the register, the successor in title could not enforce its rights under the trade mark registration.<sup>45</sup>

A mark entered in the register could be cancelled at any time at the request of its owner. The cancellation was also effected *ex officio* if 10 years had elapsed since the application for registration of the mark was filed or since it had been renewed, or if the registration was inadmissible. *Ex officio* cancellation of an application required notification of the owner by the Patent Office. If he did not file an opposition within one month of the notification, the cancellation took effect. If, on the other hand, an opposition was filed, the Patent Office was obliged to take an administrative decision. In the case of a cancellation due to the expiration of a time limit, the owner had the right to make an extension from the date of expiration of the earlier time limit.<sup>46</sup>

An application for invalidation could also be filed by a third party. This could be done in three cases:

1. If the mark was registered in its favour on the basis of an earlier application for the same or similar goods in the register of marks or in the registers of marks kept in accordance with the Trade Mark Protection Act of 30 November 1874;
2. If the business to which the trade mark belonged was no longer operated by the registered proprietor;
3. If there were circumstances suggesting that the content of the trade mark did not correspond to the actual circumstances and that there was a risk of confusion.

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<sup>43</sup> *Ibidem*, Paragraph 5.

<sup>44</sup> *Ibidem*, Paragraph 6.

<sup>45</sup> *Ibidem*, Paragraph 7.

<sup>46</sup> *Ibidem*, Paragraph 8.

### 4.3 Trade mark register

Also, in this case, the trademark owner could file an opposition within one month of becoming aware of the complaint.<sup>47</sup>

Moreover, a person residing outside Germany could benefit from the protection of the registration. The condition, however, was that the person in question had an attorney established in Germany who was the only one allowed to represent the owner in proceedings before the Patent Office or the courts. The application for registration of a foreign trademark also required the presentation of documents confirming that the registration had been obtained in the home country.<sup>48</sup>

It is important to note that despite the change in legislation, registrations made under the 1874 regulations remained valid until 1 October 1898. They could be notified in the new register before that date.<sup>49</sup>

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<sup>47</sup> *Ibidem*, Paragraph 9.

<sup>48</sup> *Ibidem*, Paragraph 23.

<sup>49</sup> *Ibidem*, Paragraph 24.





PART II

*Court registers*



## CHAPTER 5

### *Land registers*

The second part of the monograph will address registers, which can be described as court registers according to the classification. These registers constituted the second, more numerous group of elements of the public register system existing in the Kingdom of Prussia. First, we will present land registers, which are equivalents of land registers used today. These registers functioned and functioned in the past under different names. Most often, they were called mortgage books (*Hypothekenbuch*), land books (*Grundbuch*) or land and mortgage registers (*Grund und Hypothekenbuch*). However, regardless of the adopted nomenclature, they always served the same purpose – the registration of real estate ownership and the rights attached to it (including mortgage).

#### *5.1 General issues*

As it was pointed out in Chapter 1, land and mortgage registers date back to ancient times, as it was then that the first solutions were introduced to record information about ownership of the real estate and the rights encumbering it. However, in a form similar to the one used today, these registers have been functioning only since the 18th century. From the earliest times, the purpose of creating such registers was to ensure the security of trade, which is one of the conditions for the development of a sound economy.<sup>1</sup> Land and mortgage registers register property titles, creating a source record of real estate, as well as putting the legal situation in order, reducing disputes over ownership.<sup>2</sup>

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<sup>1</sup> P. Cupriak, *Księga wieczysta a kataster nieruchomości*, Przegląd Geodezyjny, year 71, Issue 10, 1999, p. 16.

<sup>2</sup> R. Moszyński, L. Policha, A. Izdebska, *Księgi wieczyste*, Warszawa 1960, p. 6.

The record file of the legal status of real estate, which is public and accessible to everyone, is also the basis for secure legal transactions and for securing mortgages.<sup>3</sup> It was the need to provide a reliable legal and organisational basis for mortgage credit and real estate transactions that gave rise to the creation of such public registers. In the early period of the existence of real estate registers, their main purpose was precisely to meet the needs of mortgage credit, and for this reason, the term “mortgage books” was adopted in some jurisdictions.<sup>4</sup> The existence of a mortgage without land registers does not even seem possible. Land and mortgage registers are not only registers which show the legal status of real estate, but they are also connected with the institution of public credibility, guaranteeing certainty in trading in the rights disclosed therein.<sup>5</sup> The warranty of public credibility of land and mortgage registers is a prevalence of the contents of the land and mortgage register over the actual legal state.<sup>6</sup>

Bearing in mind the above remarks, a land and mortgage register may be defined as an official register which aims to disclose all the rights in rem<sup>7</sup> in the real estate for which it is established.<sup>8</sup> Land and mortgage registers come within the group of public subject registers, i.e. registers which serve to disclose specific objects and their legal status.<sup>9</sup>

As it was mentioned above, the basic purpose for which land and mortgage registers are maintained is to establish the legal status of real property. The real

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<sup>3</sup> P. Cupriak, *op. cit.*, p. 16.

<sup>4</sup> B. Barłowski, E. Janeczko, *Księgi wieczyste – rejestr nieruchomości*, Warszawa 1988, p. 6.

<sup>5</sup> B. Błażejczak, *Powstanie hipoteki i jej przedmiot*, Poznań 1968, p. 17.

<sup>6</sup> B. Barłowski, E. Janeczko, *op. cit.*, p. 37.

<sup>7</sup> In the subjective sense the right in rem is a right which has two features: it concerns a thing and it is an absolute right. This means that the object of the right in rem is a thing and that it is effective towards everyone (M. Deneka, *Księgi wieczyste. Zasady materialno-prawne*, Warszawa 2010, p. 49). The decisive criteria which distinguish rights in rem from other civil rights include their subject matter and effectiveness. In principle, the subject matter of the rights in rem are things as tangible parts of nature, which are naturally and artificially separated to such an extent that in social and economic relations they can be viewed as intrinsic goods (B. Barłowski, E. Janeczko, *op. cit.*, p. 15). For example, a mortgage is a right in rem in immovable property related to a specific debt and serving as security for it (B. Barłowski, E. Janeczko, *op. cit.*, p. 23). In addition to rights in rem, there are also bond rights, which may concern not only property, but also services. These are relative rights, as they are effective only between specific entities that are parties to a legal relationship (M. Deneka, *op. cit.*, p. 50).

<sup>8</sup> B. Barłowski, E. Janeczko, *op. cit.*, p. 15.

<sup>9</sup> M. Deneka, *op. cit.*, p. 17.

property is a part of the earth's surface which has been physically and legally separated. Physical separation of real property takes place through marking its borders, and separating it from neighbouring properties.<sup>10</sup>

Summarising the above, one can therefore point to the special role of property registers as:

1. basis for planning and administration (knowledge of the legal and factual status of real estate is a necessary element in investment planning and in day-to-day administration),
2. means of protecting rights and clearly defining them,
3. support for investment financing possibilities through the possibility of better and more secure securing of loans,
4. base for tax collection,
5. means to reduce potential litigation over real estate by clearly defining the powers of individual subjects and their scope,
6. means of facilitating real estate transactions (the ease with which the legal status of the property can be determined with certainty reduces the costs of transactions and makes it possible to conduct them without recourse to professional intermediaries),
7. measure necessary for the functioning of the real estate market (the impossibility of determining the legal status of real estate in practice often completely prevents trading).<sup>11</sup>

Give the purposes they serve, property registers, therefore, have the following functions: registration, information and protection.<sup>12</sup> In modern legal doctrine, it is accepted that land and mortgage registers fulfil primarily a recording and registration function, which they do by establishing the legal status of real property. At the same time, they serve as an instrument for making entries (both when the entry is constitutive and declaratory) and protect third parties due to the institution of the warranty of public credibility.<sup>13</sup> However, in the literature, we can also find a view that land and mortgage registers fulfil the following functions: registration, information, warning, protection, law-making and control.<sup>14</sup>

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<sup>10</sup> Ibidem, p. 25.

<sup>11</sup> G. Larsson, *Land registration and cadastral systems. Tools for land information and management*, Harlow, New York 1991, pp. 57–72.

<sup>12</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005, p. 303.

<sup>13</sup> J. Skąpski, *Funkcje ksiąg wieczystych*, In: *Prace z prawa cywilnego wydane dla uczczenia pracy naukowej profesora J.S. Piątkowskiego*, ed. B. Kordasiewicz, E. Łątkowska, Warszawa–Wrocław 1985, pp. 113–131.

<sup>14</sup> M. Deneka, op. cit., pp. 23–24.

The question of the principles on which the maintenance of land registers is based is also an important issue. The German land register of interest to us was organised for property located in a particular district. It became a rule that the books were universal, i.e. they were established for each legally separate property. It was also the rule that the operation of land registers was based on the principle of entry rather than on the filing of documents. Moreover, an entry in a land register (including a section on ownership) was constitutive in nature; therefore no rights in rem could arise either between the parties or vis-à-vis third parties without an entry. This meant that the so-called principle of entry (*Eintragungsprinzip*) was adopted. As a rule, entry took place at the request of the person entitled. In certain cases, however, the court could also act *ex officio*.<sup>15</sup>

The main ideas of German legislation relating to entries can be summarised in the following principles:

1. principle of legality,
2. principle of formal and substantive consensus,
3. principle of the parties' request,
4. principle of compulsory entry,
5. principle of particularity,
6. principle of publicity,
7. principle of priority.<sup>16</sup>

The principle of legality was expressed under the control of the mortgage judge, who examined whether entries inadmissible due to the form or content of the application were not entered in the book. As the entry was of constitutive significance, there could not be a difference between its content and the actual state of affairs other than a result of an entry error or a failure to disclose inheritance rights. The declarations required for entry and the documents justifying the entry had to be contained in a public document or officially certified.<sup>17</sup> In order to ensure maximum reliability of the books, according to German legislation, the scope of the judicial examination of the request for entry was in practice also unlimited. The court was also entitled to reject a request for entry if it found that the applicant was not entitled to cause an entry of certain content.<sup>18</sup>

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<sup>15</sup> T. Stawecki, *op. cit.*, p. 187.

<sup>16</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, ed. A. Kraus, Warszawa-Kraków 1922, p. 30.

<sup>17</sup> R. Moszyński, L. Policha, A. Izdebska, *op. cit.*, pp. 126-127.

<sup>18</sup> T. Stawecki, *Rejestry nieruchomości, księgi hipoteczne i księgi wieczyste od czasów najdawniejszych do XXI wieku*, *Studia Iuridica*, Issue 40, 2002, p. 189.

The principle of consensus developed with the legislation. Originally, German mortgage law required, for an entry to be made, that the parties demonstrate to the mortgage court, by means of documents deserving of belief, the circumstances justifying the claim for entry, the so-called title. More recent legislation, however, accepted, in accordance with the principle of substantive consensus, that for a substantive material and legal change to occur, in addition to the entry, a substantive abstract consent was also necessary, i.e. completely detached from the obligatory cause of the obligation. The formal law went even further in the direction of abstractness, and in order to obtain an entry, it was not required to prove this consent in rem before the office. Thus, in order to simplify mortgage trading, the so-called principle of formal consensus was adopted, whereby the condition for entry was the submission to the office of a unilateral and strictly abstract consent to a certain entry, issued in the form described in para. 29 of the Land Registry Act<sup>19</sup> by the person whose right is affected by the entry, i.e. is impaired. Such a person is called a passively interested person (*Pasivbeteiligter*). The person gaining entry, on the other hand, is an actively interested party (*Aktivbeteiligter*). In this way, the entry depended solely on a purely formal assumption, which was completely independent of the material conditions for the material and legal change that the entry was to bring about. On the basis of approval of an entry, the Land Registry office allowed for an entry without any concern as to whether the substantive conditions for a change of ownership were fulfilled, i.e. whether consent in rem was given.<sup>20</sup> At the same time, the parties – even if they fulfilled the material conditions of the legal change – would not obtain the entry if they did not submit the permission for it.<sup>21</sup> According to the principle of formal consensus, the land registry office was

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<sup>19</sup> Grundbuchordnung vom 24. März 1897, Reichsgesetzblatt, year 1897, pp. 139–157, Paragraph 29: *Eine Eintragung soll nur erfolgen, wenn die Eintragungsbewilligung oder die sonstigen zu der Eintragung erforderlichen Erklärungen vor dem Grundbuchamte zu Protokoll gegeben oder durch öffentliche oder öffentlich beglaubigte Urkunden nachgewiesen werden. Andere Voraussetzungen der Eintragung bedürfen, soweit, sie nicht bei dem Grundbuchamt offenkundig sind, des Nachweises durch öffentliche Urkunden* (An entry shall be made only if the consent to the entry or other declarations required for the entry are recorded before the land registry office or are evidenced by public or publicly certified documents. Other conditions of registration require, unless they are obvious to the land registry office, proof by public records).

<sup>20</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Reichsgesetzblatt, year 1896, pp. 195–603, Paragraph 873.

<sup>21</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 47–48.

completely exempted not only from examining the obligatory basic act but even from examining the material conditions of the substantive legal change itself. It had to confine itself to examining whether the entry could take place on the basis of a unilateral consent to the entry on the part of the person whose rights were to be affected by the entry. The principle of formal consensus thus restricted the principle of the legality of the entry to a very large extent, allowing the judicial examination of the entry only in the formal direction.<sup>22</sup>

The principle of the parties' request was based on the fact that an entry should be made only upon request unless the law provided otherwise. This rule was based on the belief that the public interest was rarely followed, and the legislation was such that self-interest should induce the parties to settle their cases quickly by accounting. For this reason, the land registry office generally did not apply *ex officio*, even when it was officially aware of material and legal change requiring entry.<sup>23</sup> *Ex officio* applications were entered:

1. To reverse the effects of erroneous entries or to prevent erroneous entries and the misleading of third parties:
  - 1) if the office has made an entry in violation of a statutory provision, rendering the land register erroneous. A provision was entered *ex officio*, and if it was inadmissible, it was deleted;
  - 2) objection or warning (reservation) in favour of the contested application and in favour of the complaint;
  - 3) if there were encumbrances on several lands jointly by a single right, then the joint encumbrances on other lands were to be shown in the list of each land *ex officio*. The extinction of the right was also recorded *ex officio*;
  - 4) When registering the heir apparent (*Vorerbe*), the right of the heir substituted (*Nacherbe*) was also registered *ex officio*. Insofar as the heir apparent was released from the restrictions on his right of disposal, the release was also entered *ex officio*. If a testamentary executor was appointed, this was entered *ex officio* in the heir's entry unless a specific succession subject was not under the executor's administration. This was to make clear the limitations of the heir in disposing of the inherited right;
  - 5) Entries were also made *ex officio* in order to keep the land register consistent with the cadastre;

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<sup>22</sup> *Ibidem*, p. 48.

<sup>23</sup> *Ibidem*, p. 55.



- 6) a separate list was established for the inherited right to build already upon the establishment of this right; it was possible to establish a separate list *ex officio* for the land covered by the common list and for the part of the land separately encumbered if there was (in both cases) concern about the land register being unclear.
2. An entry could also be made at the request of the authorities. This occurred if they were authorised to do so under the provisions of the Act. Such a summons could be regarded as an application, characterised by the fact that it also contained in itself the material ground for the entry since the summons superseded the permission for the entry and other possibly necessary declarations by the concerned parties. The Land Registry Office was only entitled to examine whether the summons fell within the competence of the summoning office and whether, in terms of content, it corresponded to the requirements applicable to a request for entry. The most important cases of this type were:
- 1) The trial court was entitled to summon the land registry office to make an entry of interim orders;
  - 2) The execution court was entitled to call for the entry or deletion of annotations of sale proceedings, the entry of the auction purchaser, the entry of necessary security mortgages, and the deletion of encumbrances which had been extinguished by the arrival of the auction;
  - 3) The competition court had the power to order the entry of the opening of the contest and the general prohibition of disposal;
  - 4) The guardianship court could, on the other hand, request the entry of a protective mortgage on the guardian's land.<sup>24</sup>

The principle of compulsory entry meant that entry in the register was a necessary condition of the contract of transfer of ownership and other agreements establishing a limited right in rem on real property.<sup>25</sup> The entry in the land register (including the section on ownership) was constitutive, so no rights in rem could arise either between the parties or against third parties without the entry.<sup>26</sup> An exception to the principle of compulsory entry was made

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<sup>24</sup> *Ibidem*, pp. 58–60.

<sup>25</sup> A. Moniuszko, *Księgi sądowe, księgi gruntowe czy rejestry nieruchomości? Jeszcze o tzw. księgach gruntowych w dawnej Polsce (w odpowiedzi na artykuł Dariusza Felcenlobena)*, *Rejent*, Issue 10 (282), 2014, pp. 120–121.

<sup>26</sup> T. Stawecki, *Rejestry nieruchomości, księgi hipoteczne i księgi wieczyste...*, p. 189.

for encumbrances based on pledges by letter (*Briefpfandrechte*), which could be disposed of and encumbered with a pledge or usufruct without entry by making a declaration of concession in writing and handing in a pledge letter. The transfer of a land debt for which a bearer's note (*Inhabergrundschuld*) was issued, effected by handing it over, the disposition of a co-heir's share in the estate, the transfer of claims to outstanding interest and other incidental claims of mortgage claims, also did not require registration. Without entry, the usufruct and the lien on the land were also extinguished. Furthermore, an entry was not required for the transfer of ownership of land not subject to book-entry compulsion and for a change in the material and legal status not based on a legal transaction of the parties but on another legal basis, i.e. a legal change under the law itself or as a result of an order of the authorities. If such changes were entered, their entry was of a declarative nature only.<sup>27</sup>

This principle was linked to the bookkeeping obligation (*Buchungszwang*), which required that a land register be kept for each property (except for those exempted from the obligation). In this case, the land register office could act *ex officio*, not only without the owner's request but also against his will.<sup>28</sup>

The following were exempted from the compulsory bookkeeping on the basis of the Land Register Act and the particular legislation:

1. Reich lands;
2. Domains and lands of the Länder, municipalities and other municipal associations (even if not for public purposes);
3. Land of churches, monasteries and schools;
4. Public roads and waters and land of railway companies serving public traffic.<sup>29</sup>

The principle of particularity (*Spezialitätsprinzip*) was that each entry in the land register had to demonstrate the entire content of the right or legal relationship to which it related. The idea was that it should be possible to determine the nature and extent of the encumbrance on the property on the basis of the book itself. The entry, therefore, had to show as precisely as possible to which individual land the right referred. The right itself also had to be precisely defined, or at least limited by a maximum limit.<sup>30</sup>

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<sup>27</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 31–32.

<sup>28</sup> *Ibidem*, p. 12.

<sup>29</sup> Grundbuchordnung vom 24. März 1897, Paragraph 90.

<sup>30</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 13–14.

The principle of publicity was implemented by:

1. inspection of the land and mortgage register,
2. inspection of the land and mortgage register files,
3. issuing extracts from the register,
4. issuing copies of documents found in the land and mortgage register files.<sup>31</sup>

The Act on Land and Mortgage Registers introduced formal openness of the books, allowing anyone who could invoke a legitimate interest to inspect the books. This interest occurred when a person was registered in the land register or intended to acquire (or assert) a mortgage right. Formal publicity entitled the holder to inspect not only the register itself but also the documents, the content of which was referred to by the entry formula for its supplementation. Outstanding requests for entries could also be inspected. On the same principles, standard or certified copies could be requested.<sup>32</sup>

The second type of publicity pertaining to land registers is material publicity, which is the disclosure of the legal status of a real estate in the land register, combined with the principle that no one can plead ignorance of entries or requests for entry, of which an entry has been made.<sup>33</sup>

The priority principle (*Prioritätsprinzip*) under the Civil Code specified that if rights were registered in the same part of the land register, the order of several rights encumbering the property was determined according to the order of registration. On the other hand, if rights were registered in different sections, the right registered under an earlier date had priority, while rights registered under the same date had the same priority.<sup>34</sup> As stipulated in the Land Records Act, entries in the same part were made in chronological order, with entries made in parallel having the same priority. For entries made in different parts, if entries were made on the same date but not equally requested, a note had to be made that the entry requested later followed the entry requested earlier.<sup>35</sup>

Other principles worth mentioning in the context of the German land register system are as follows:

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<sup>31</sup> A. Maziarz, *Zasada jawności ksiąg wieczystych w polskim i niemieckim systemie prawnym*, Rejent, Issue 9 (245), 2011, p. 77.

<sup>32</sup> Grundbuchordnung vom 24. März 1897, Paragraph 11.

<sup>33</sup> M. Deneka, op. cit., p. 58.

<sup>34</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Paragraph 879.

<sup>35</sup> Grundbuchordnung vom 24. März 1897, Paragraph 46.

1. Principle of presumptions (*Vermutungswirkung*) introducing a statutory presumption that a right entered in favour of a certain person in a land register, the person is entitled to it, while a right deleted from it does not exist.<sup>36</sup>
2. Principle of the protection of good faith (*Gutgläubenswirkung*) allowing for the acquisition of a right on real estate from an unauthorised person who is nevertheless supported by the contents of the land register.<sup>37</sup>

Another important element of the German system was that registration was judicial in nature. The keeping of the register was thus one of the routine duties of the courts of first instance. It should be emphasised that it was German law that finally established the principle that the register was kept by the court as part of its adjudicatory (non-procedural – German *freiwillige Gerichtsbarkeit*) functions and not at the court as had previously been the case.<sup>38</sup>

The disclosure of rights in rem in the property and of personal rights and claims relating to the property was effected by means of an entry in the register.<sup>39</sup> An entry was understood to be any entry in the land register which resulted in a change in the legal status of the real estate or in the determination of this status in accordance with the actual legal situation.<sup>40</sup> If the rule that without an entry no change in the legal status of a real estate can take place is applied, it means that in any case an entry in the land and mortgage register is required for the creation, change or expiration of rights in rem in a real estate. The second possible principle assumes that an entry in the Land and Mortgage Register is a sufficient prerequisite for the change in the legal status of real property, regardless of the existence of other prerequisites (principle of formal validity of an entry). In other words, each entry in the Land and Mortgage Register has legal force and creates a subjective right on the real property regardless of the fulfilment of other material and legal prerequisites. Therefore, changes in the legal status which take place outside the land register are of no significance.<sup>41</sup>

As regards land registers (mortgage registers), two types of entries can be distinguished:

1. A constitutive entry, i.e. one that constitutes one of the necessary prerequisites for a change in the legal status of a real estate. This means

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<sup>36</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Paragraph 891.

<sup>37</sup> Ibidem, Paragraph 892.

<sup>38</sup> T. Stawecki, *Rejestry nieruchomości, księgi hipoteczne i księgi wieczyste...*, p. 189.

<sup>39</sup> M. Deneka, op. cit., p. 65.

<sup>40</sup> B. Barłowski, E. Janeczko, op. cit., p. 28.

<sup>41</sup> M. Deneka, op. cit., pp. 76–77.

## 5.2 Land registers in Prussia

that in all those cases where such an entry is required, without it the acquisition, change or cancellation of a right will not occur.

2. A declaratory entry, on the other hand, merely reveals the acquisition, change or cancellation of a right that has already taken place.<sup>42</sup>

Declarative entries were also called corrections (*Berichtigung*). Constitutive entries are called *rechtsaendernde Eintragungen*.<sup>43</sup>

Due to the effectiveness of an entry in time, final and provisional entries can also be distinguished. A final entry is one which finishes the land and mortgage register proceedings by disclosing or deleting a specific right from the book. A provisional entry is an entry made for the duration of a procedure in order to secure its outcome.<sup>44</sup>

Apart from its significance for a legal change, an entry also had the following consequences:

1. It decided on the priority of rights;
2. It had a bearing on acquisitive prescription and protected against the statute of limitations;
3. It gave rise to a presumption of the right registered;
4. It entitled the person entered to acts effective in favour of bona fide third parties.<sup>45</sup>

The principles described above apply equally to Prussian land registers as well as to land and mortgage registers maintained in Poland today. For this reason, they are of great importance when considering the influence of Prussian solutions on Polish legislation.

## 5.2 Land registers in Prussia

The earliest Prussian law on land registers was an edict of August 28, 1693. This law, however, was based not on the title to the land but its hypothetical encumbrances and applied only to the residences of Berlin and Cologne with their suburbs. However, this edict was not implemented until after 1702.<sup>46</sup>

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<sup>42</sup> B. Barłowski, E. Janeczko, op. cit., p. 32.

<sup>43</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 20–21.

<sup>44</sup> B. Barłowski, E. Janeczko, op. cit., p. 69.

<sup>45</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, p. 65.

<sup>46</sup> K. Orzechowski, *Księgi i akta śląskiej hipoteki jako źródło historyczne i historyczno-prawne*, *Czasopismo Prawno-Historyczne*, Issue 8/1, 1956, p. 187.

In Prussia, the introduction of land registers was already provided for in the edict of 1704 whereby they were to replace the court registers, which originally performed the function of a real estate register. However, this intention was not implemented until after 1722, when the Mortgage and Competition Ordinance was issued, followed by the Mortgage Ordinance for Silesia of 4 August 1750,<sup>47</sup> the provisions of which were also extended to other provinces in 1753.<sup>48</sup> Eventually, however, the principles of the Prussian mortgage book were set out in an act of 20 December 1783 (*Allgemeine Hypothekenordnung für die gesamten königlichen Staaten*)<sup>49</sup> whereby the entry of a mortgage in the book had a law-making character. However, the transfer of ownership took place on the basis of *traditio* and it did not require registration in the land register.<sup>50</sup> Ultimately, it was the Prussian Landrecht of 1 June 1794 that introduced the provision that a mortgage right could only be acquired by “intabulation” in the public register.<sup>51</sup> The land register system was further developed in the second half of the 19th century. This was first done by the Act of 5 May 1872 on the Acquisition of Real Estate<sup>52</sup> and the Act of 5 May 1872 on Land Register.<sup>53</sup> These acts marked a definitive break with the *traditio* concept and a return to the old German legal principle of *Auflassung*, understood as an agreement between the parties on the transfer of ownership of the real estate. *Auflassung* was obligatory before the land registry office (*Grundbuchamt*). However, it was not sufficient to transfer ownership of the property. To this end, an entry in the land register (*Eintragung*) was necessary.<sup>54</sup> The principle of entry has been extended to all rights in rem in immovable property.<sup>55</sup> The Land Register

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<sup>47</sup> Ibidem, p. 187.

<sup>48</sup> T. Stawecki, *Rejestry nieruchomości, księgi hipoteczne i księgi wieczyste...*, pp. 187–188.

<sup>49</sup> F. Schmidt, *Archivierung und Auswertungsmöglichkeiten von geschlossenen Grundbuchunterlagen im Brandenburgischen Landeshauptarchiv*, In: *Aus der brandenburgischen Archivalienkunde. Festschrift zum 50jährigen Jubiläum des Brandenburgischen Landeshauptarchivs*, ed. Klaus Neitmann, Berlin 2003, p. 161.

<sup>50</sup> P. Blajer, *Z historii ksiąg gruntowych (Grundbücher)*, *Studia Prawnicze: rozprawy i materiały*, Issue 2, 2015, p. 79.

<sup>51</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, p. 187.

<sup>52</sup> Gesetz vom 5. Mai 1872 über den Eigenthumserwerb und die dingliche Belastung der Grundstücke, Bergwerke und selbstständigen Gerechtigkeiten, *Gesetz-Sammlung für die Königlichen Preußischen Staaten*, year 1872, pp. 433–445.

<sup>53</sup> Grundbuchordnung vom 5. Mai 1872, *Gesetz-Sammlung für die Königlichen Preußischen Staaten*, year 1872, pp. 446–507.

<sup>54</sup> W. Turnau, *Die Grundbuchordnung vom 5. Mai 1872 mit Ergänzungen und Erläuterungen*, Paderborn 1878, pp. 180–202.

<sup>55</sup> P. Blajer, *Rejestry nieruchomości. Studium prawnoporównawcze*, Warszawa 2018, p. 78.

Act also laid down rules for the compatibility of entries in the land register with cadastral documentation. On 2 September 1872, an executive regulation was issued concerning the procedure for establishing land registers on the principles of a complete unification of their entries with the cadastral records.<sup>56</sup> The Reich Mortgage Law of 1887 was also of some importance for the land register system.<sup>57</sup>

The land register system was finally introduced in Germany by the German Civil Code of 18 August 1896.<sup>58</sup> The land register system was further detailed by the Land Registry Act of 23 March 1897,<sup>59</sup> in the wording of a notice of 20 May 1898, with subsequent amendments and additions relating to the territory of Prussia.<sup>60</sup> However, the main part of this law did not come into force until 1 January 1900, together with the German Civil Code.<sup>61</sup> The general ordinance on the introduction of the Land Register Act of 20 November 1899,<sup>62</sup> on the other hand, covered land registration transactions.

However, it should be noted that a land register system based on the Prussian model, in some parts of the German Empire, had already entered into force before 1900. This was the case in Oldenburg (1876), Coburg-Gotha (1877), Brunswick (1878), Lippe-Detmold, Schwarzburg-Sondershausen and Schaumburg-Lippe (1884),<sup>63</sup> among other things. At the same time, it should be pointed out that establishing books according to uniform regulations did not take place in Germany immediately. In the case of some federal states, such as Thuringia, it took a very long time and dragged on even until the Second World War. Many particularisms also developed that were not eliminated until 1934, when the federal states were stripped of their sovereignty. The most significant differences were between the Prussian model and the Bavarian model.<sup>64</sup>

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<sup>56</sup> M. Mika, *Historia katastru polskiego*, Infrastruktura i ekologia terenów wiejskich, Issue 6, 2010, p. 79.

<sup>57</sup> T. Stawecki, *Rejestry nieruchomości, księgi hipoteczne i księgi...*, p. 188.

<sup>58</sup> Bürgerliches Gesetzbuch vom 18. August 1896, pp. 195–603.

<sup>59</sup> Grundbuchordnung vom 24. März 1897, pp. 139–157.

<sup>60</sup> Bekanntmachung vom 20. Mai 1898 des Textes der Grundbuchordnung in der vom 1. Januar 1900 an geltenden Fassung, Reichsgesetzblatt, year 1898, pp. 754–770.

<sup>61</sup> H. Henning, *Kataster und Grundbuch*, Berlin 1961, p. 32.

<sup>62</sup> Allgemeine Verfügung vom 20. November 1899 zur Ausführung der Grundbuchordnung, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, pp. 349–379.

<sup>63</sup> P. Blajer, *Z historii ksiąg gruntowych (Grundbücher)*, p. 84.

<sup>64</sup> P. Blajer, *Rejestry nieruchomości*, pp. 82–83.

The Land Registry Act did not precisely define the device of land registers. It contained only a few provisions on the subject, leaving the more detailed regulation of the matter to the national boards of justice.<sup>65</sup>

According to the German Land Registry Act, the registers were kept by the Land Registry office. The law, however, allowed for the possibility of defining these offices and their systems by means of individual legislation.<sup>66</sup> In Prussia, the authorities were the courts of first instance (*Amtsgericht*) for all land located in their district.<sup>67</sup> If a land lay in the official district of several courts, or if several lands lay in the official districts of several land registers, then a higher instance court common to them, or if there was no higher instance court, was appointed by the Minister of Justice to act as the land registry office.<sup>68</sup> Land registers were kept separately for each legally separate property (principle of universality of land registers) by the court in its judicial function.<sup>69</sup> Under German law, the land registry clerk was both the judge handling the applications and the land registry clerk assigned to him.<sup>70</sup>

As a rule, the land register was kept for a designated territorial district (*Bezirk*). A district was, in principle, every separate municipality or autonomous manorial area. For the purpose of keeping the register, however, a municipality's area could be divided into several districts (*Anlegungsbezirke*). Each piece of land located within a district had to have its own separate place in the land register within the meaning of the Civil Code, called a list, which was given a running number in the register as its designation. In Prussia, a list could refer to one or several lands of the same owner.<sup>71</sup> At the same time, the Land Register Act stipulated that the designation of properties was to be made according to their official list, in which they were to be designated by numbers or letters.<sup>72</sup> In

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<sup>65</sup> Grundbuchordnung vom 24. März 1897, Paragraphs 1 and 87–89.

<sup>66</sup> J. Krech, *Grundbuchordnung vom 24. März 1897. Textausgabe mit Einleitung, Hinweisen auf das Landrecht sämtlicher Bundesstaaten, Anmerkungen und Sachregister*, München 1900, pp. 16–17.

<sup>67</sup> Ausführungsgesetz zur Grundbuchordnung vom 26. September 1899, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1899, pp. 307–316, Article 1.

<sup>68</sup> *Ibidem*, Article 2 and Ausführungsgesetz zum Deutschen Gerichtsverfassungsgesetz vom 24. April 1878, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1878, pp. 230–252, Paragraph 20.

<sup>69</sup> M. Deneka, *op. cit.*, pp. 19–20.

<sup>70</sup> F. Triebel, *Güthes Grundbuchordnung für das Deutsche Reich und die preußischen Ausführungsbestimmungen, Band 2*, Berlin 1925, p. 1365.

<sup>71</sup> J. Krech, *op. cit.*, pp. 19–22.

<sup>72</sup> Grundbuchordnung vom 24. März 1897, Paragraph 2.



Prussia, the land and building tax books served as such a list.<sup>73</sup> This arrangement of land registers resulted from the adoption of the real system as their basis.<sup>74</sup> The public register, apart from the main book in which entries were made, also consisted of an appended collection of documents.<sup>75</sup>

The Act on Land Registers in par. 3 assumed that each land was to have its specific place in the land register. For this reason, as a rule, a separate list was established for each land, even if they had a single owner. However, the law allowed for a joint list to be maintained for several lands of the same owner, as long as there was no ambiguity in the land register. In such a joint list, each land was marked with a separate current number. In fact, the owner was free to combine his areas into a land unit.<sup>76</sup> The composition of the land could change either by combining or dividing areas. However, it always had to consist of at least one cadastral parcel, and the areas in the land register had to be marked accordingly.<sup>77</sup>

Land registers were also maintained for certain rights, equated with land by law. Such rights were viewed in terms of acquisition and encumbrance as if they were land and could therefore be listed separately. The so-called independent rights included:

1. Hereditary right of construction (hereditary and transferable right to possess a building on another's land both on and under its surface);
2. Rights of real industries (*Realgewerbeberechtigungen*);
3. Selected economic monopolies dating from earlier times (*Zwangs- und Bannrechte*);
4. Rights (inheritable and transferable) under Articles 196, 368 of the Introductory Act to the Civil Code;
5. Granted mining rights;
6. Railway units consisting of land and other property rights of the railway company. Separate books were kept for the railway units in the courts having jurisdiction over the seat of the main railway administration.<sup>78</sup>

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<sup>73</sup> Königliche Verordnung vom 13. November 1899, betreffend das Grundbuchwesen, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1899, pp. 519–526, Article 2.

<sup>74</sup> F. Förster, *Preußisches Grundbuchrecht*, Berlin 1872, p. 25.

<sup>75</sup> M. Deneka, op. cit., pp. 19–20.

<sup>76</sup> C. Schaeffer, J. Wiefels, *Freiwillige Gerichtsbarkeit (Versorgende Rechtspflege)*, Leipzig 1943, p. 84.

<sup>77</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, p. 6.

<sup>78</sup> *Ibidem*, pp. 17–18.

In terms of entry, according to the provisions of the Civil Code, the legal act by virtue of which the establishment, transfer, encumbrance, and change in the content of property rights in land was effected consisted of two equal and equivalent component acts: the consent of the parties to the occurrence of the legal change and the entry of that change in the land register. As a whole, it was a substantive legal act, whereas the consent itself could be called substantive consent. Prior to the entry, the parties were bound by their consent only if their statements were documented in court or by a civil law notary, or if they were made before the land register office, or if they were filed with that office, or if the owner gave the other party permission for the entry, corresponding to the provisions of the Land Register Act.<sup>79</sup>

When transferring ownership of land, the consent in rem was called a deed or transfer. The same rules applied to a sentence as to consent in rem except:

1. The consent had to be declared by the parties before the land registry office, and this in the presence of both parties (par. 925 of the Civil Code) or their attorneys. An oral and mutually accepted declaration of consent in kind, recorded by the land registry office, was necessary. A statement that did not correspond to the form specified in par. 925 of the Civil Code was invalid;
2. A sentence should precede the entry (if this is not the case, it does not invalidate the entry);
3. A sentence declared under a condition or limited in time was null and void;
4. As a result of the abstractness of the sentence, the mortgage judge did not examine the underlying contract. National legislation could stipulate that the land registry office accepted the sentence only if the underlying contract was submitted to it. In Prussia, however, this rule did not apply.<sup>80</sup>

The surrender of a bookkeeping right required an entry in the land register and the consent of only one party. Also, in cases where it was permissible to establish a right in rem without the simultaneous acquisition of this right by another person, a unilateral declaration by the disposer and an entry in the land register were sufficient. Such situations included:

1. Encumbrance of land by a lien in favour of the owner himself in such a way that the lien was vested in the owner from the outset;
2. Establishment of a security mortgage for claims arising from bearer notes;

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<sup>79</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Paragraphs 873, 877.

<sup>80</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, p. 40.

3. Creation of a charge on land in the form of a land charge if the land charge is issued in bearer form.<sup>81</sup>

If, on the other hand, an accounting right to be modified or abolished by a legal transaction was encumbered by a further right in rem in favour of a third party, the consent of that third party was required for its modification or abolition. Consent had to be given either to the land registry office or to the person in whose favour it was intended. It was irrevocable. The acquiescence could also be given after the registration, but, as a rule, the authorities should not allow this to happen. The acquiescence of a third party was also necessary if the right to be abolished or modified was vested in every contemporary owner of the other land and if the dominant land was encumbered with property rights of third parties.<sup>82</sup>

The third case was the abolition by legal action of a lien on land (mortgage, land debt) existing in favour of a person different from the owner. This had to be made either to the office or the creditor and was irrevocable. Also, a right encumbering a mortgage, land debt or annuity could be removed only with the consent of the person in whom it was vested.<sup>83</sup>

The general principle of formal mortgage law was that all circumstances to be proven to the land registry office for the purpose of making an entry could only be proven by means of documents deserving full faith and credit, the qualification of which was precisely defined by law. Other means of proof were excluded (principle of proof by document). It was also a rule that the interested parties were to provide documents to the land registry office, which was not to implement the investigation of whether the conditions for entry were met.<sup>84</sup>

As mentioned above, the permission for an entry was a unilateral and abstract declaration of intent, of a formal nature, which had as its object not a legal change but only the entry itself.<sup>85</sup> The entry could take place only if both the consent to the entry and the other declarations necessary for the entry were submitted to the land register office or were evidenced by a public or publicly certified document. If, however, an entry was made without any documents in the prescribed form, its effectiveness was not questioned if a declaration concerning it was made.<sup>86</sup>

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<sup>81</sup> *Ibidem*, pp. 41–43.

<sup>82</sup> *Ibidem*, pp. 43–44.

<sup>83</sup> *Ibidem*, p. 44.

<sup>84</sup> *Ibidem*, p. 48.

<sup>85</sup> *Ibidem*, p. 49.

<sup>86</sup> *Ibidem*, pp. 52–53.

The application for entry was merely a procedural act requesting the land registry office to authorise a certain entry. The application was not, therefore, a substantive condition for a legal change, in the sense that its absence would itself invalidate an entry made despite its absence. Unlike permission for entry and other statements needed for entry, which should be in the form prescribed by para. 29 of the Land Registry Act in order for the land registry office to allow the entry, the law did not provide a written form for the application itself. Even an uncertified private letter was therefore sufficient. Only in those cases where the application for entry was to replace the permission for entry or any other statement required for entry, it had to correspond to the external form of the application and the power of attorney for the application in the form prescribed by law.<sup>87</sup> Other presumptions for entry had to be demonstrated to the court by public documents unless they were notorious in that office. Special provisions specified by means of which documents certain circumstances could be proven.<sup>88</sup> Applications for entry in land registers had to be supported by a court or notarial document. For the detachment of part of the property, it was necessary to submit an extract from the tax book and an updated, officially certified map. Implementing rules issued by the Ministers for Finance and Justice in 1872 laid down the principles for issuing extracts from the tax books for the land registers and regulated the permanent process of exchanging information between the land registry offices and the cadastral offices.<sup>89</sup> If the document constituting the basis for an entry was found in the collection of documents of another land register of the same court, it was not necessary to make a duplicate. It was sufficient to submit a letter referring to the collection in which the document was located.<sup>90</sup>

A person entitled to file a motion was every person whose right was affected by the entry (i.e. every person with a passive interest) and every person in whose favour the entry was to be made, i.e. who directly gained legal benefits from the entry (every person with an active interest). Of several such persons actively and passively interested, each was entitled to file an application independently of the others. A creditor in possession of an enforceable enforcement title was also entitled. The creditor could only request the entry of his debtor's right if the entry was a rectification of the land registry. However, this entitlement also had to be recorded in the enforcement title and depended on the previous rectification of

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<sup>87</sup> Grundbuchordnung vom 24. März 1897, Paragraphs 29–30.

<sup>88</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 55–56.

<sup>89</sup> P. Blajer, *Z historii ksiąg gruntowych (Grundbücher)*, p. 84.

<sup>90</sup> R. Moszyński, L. Policha, A. Izdebska, op. cit., p. 112.

the land register by the entry of the debtor as an entitlement holder. The notary who certified or attested the statement necessary for the entry was also required to request the entry on behalf of the entitled party.<sup>91</sup>

The content of the application and annexes had to justify the demand expressed in it and agree with the permission for the entry. The request had to comply with the principle of specificity. The withdrawal of an application already submitted to the land register office and the revocation of a power of attorney for such an application required the form of a public document or a publicly certified document, or the form of a record of the land register office, even if the application and the power of attorney did not require such a form.<sup>92</sup>

All applications and summonses for entries received by the court were accompanied by a presentment (*Eingangsvermerk*). This was important because the order in which applications for the same land were dealt with was determined by the serial number of the entry, and this determined the priority of the entries – the exact moment when the application was received by stating the day, hour and minute had to be recorded.

Only land registry officials were entitled to receive applications. Subsequently, the land registry office examined whether the application and the attachments, as well as the official request for entry, as regards form and content, complied with the requirements of the law and whether the requested entry was legally admissible. If the application and the attachments justified the requested entry, the mortgage judge ordered the entry, i.e. formulated the wording of the entry and instructed the keeper of the land register to enter this wording in the land register, and in particular in the section and subsection intended for the entry.

Each entry had to be dated and signed by the land registrar. Deletion of rights or restrictions on the disposal by means of a deletion entry also fell under the scope of making an entry. In order to keep the entries as concise and transparent as possible, the form of the entry could, in the cases provided for by law, refer to the content of the documents stored in the files of the land registry office. In particular, it could refer to the registration permit or the court decision superseding it in order to specify the content of the right in more detail.<sup>93</sup>

The land register office had to deal with applications in the order of their receipt, and applications received simultaneously had to be dealt with in parallel. This was due to the decisive importance, the date of entry for the priority of

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<sup>91</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 57–58.

<sup>92</sup> *Ibidem*, p. 58.

<sup>93</sup> *Ibidem*, pp. 60–62.

rights among themselves, i.e. for the so-called degree. Paragraph 17 of the Land Records Act provided that if several applications concerned the same right, it was not allowed to make an effective entry of the later application before the earlier one had been resolved.<sup>94</sup>

The entry took effect upon execution, and the German Land Registry Law did not know the reversal of the legal effects of the entry to any earlier time, and in particular to the time when the application for entry was submitted to the Land Registry. In fact, however, para. 17 of the Land Registry Act secured the priority of each application according to the time of filing, in that no change in the accounting status of the right in question could take place until the application was settled. However, this meant that in order to find out about a mortgage, it was necessary not only to look through the book but also to check whether there were any unsettled applications in the files. This is why the principle of formal openness was extended to them.

If there was an obstacle preventing entry, the court either rejected the application or granted the applicant time to remove the obstacle:

1. In the first case, the application was dealt with, and the effects attached to the submission of the application to the land registry office were waived. The resubmission of a corrected application made it a new application. The applicant had an indefinite right of appeal against the rejection resolution. The documents were also returned to him;
2. The other possibility was to point out deficiencies in the application (*Beanständung*), also known as an interim order (*temporisierende Zwischenverfügung*), which caused the processing of the application to be suspended. If the applicant removed the obstacles in a specified manner within the specified time, the court allowed the entry, which was the settlement of the original application. However, if the time to remove the obstacles has passed without a response, the court has rejected the application.<sup>95</sup>

The law allowed the judge to choose freely between solutions. If it happened that, while an intermediate order was being issued and the application was therefore unsettled, another application concerning the same right was received by the court, it was not allowed to proceed with it.<sup>96</sup> Nonetheless, in order to prevent deadlocks or negative consequences for third parties, the rule was

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<sup>94</sup> Grundbuchordnung vom 24. März 1897, Paragraph 17.

<sup>95</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 62–63.

<sup>96</sup> Grundbuchordnung vom 24. März 1897, Paragraph 17.

introduced that a reservation (warning) or objection was entered in favour of an earlier application so that it was considered to have been settled. This allowed the office to proceed with a later application. If an earlier entry was granted, it secured the original priority.<sup>97</sup>

Each entry had to be notified to the applicant, the registered owner and all persons who benefited legally from the entry or against whom the entry was directed. This notification could be waived.<sup>98</sup> The Law of 14 July 1905 supplemented the provisions of the Land Register Act with a provision that persons for whom a mortgage, a land or annuity debt, a real charge or a right on one of these rights is registered should also be notified of the entry of the change of ownership.<sup>99</sup>

The structure of the land register and its accompanying records has varied over time. The Land Register Act 1872 knew of two types of forms kept by land registrars in separate volumes. In Form I, each property was assigned a separate card (real system), which was divided into a title and three sections. In Form II, each landowner was assigned an “article” referring to the article number of the relevant tax book (*Steuerbuch*).<sup>100</sup> The land register laws issued on the occasion of the passing of the Land Register Act of 1897, however, no longer knew the second form.<sup>101</sup>

Each inventory consisted of the following parts: an inscription, a list of components (*Bestandsverzeichnis*) and three sections. The inscription served to individualise the list by stating the county court, the district for which the book was kept, the district (*Kreis*) to which the district belonged, and the number of volumes and pages of the book. The inscription also noted the possible debt limit, which was entered in section II.

The inventory of components served to individualise the land for which the inventory was kept. The inventory of components consisted of two sections: the inventory of land and the inventory of rights connected with the ownership of land. In the land inventory, each listed land was given a separate running number (the first heading). Subsequent boxes were intended for the inclusion of cadastral and other cadastral designations of the individual parcels comprising the land in

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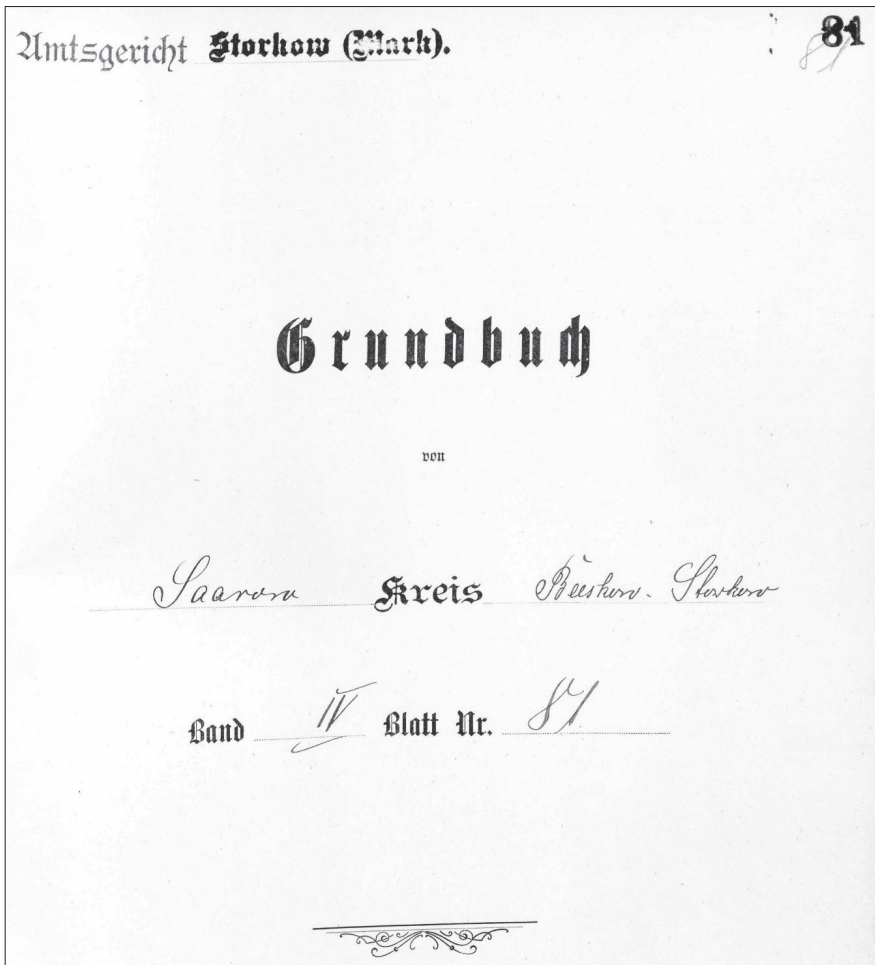
<sup>97</sup> Ibidem, Paragraph 18.

<sup>98</sup> Ibidem, Paragraph 56.

<sup>99</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, p. 64.

<sup>100</sup> W. Bahlmann, *Das Preußische Grundbuchrecht*, Berlin 1872, pp. 188–195.

<sup>101</sup> Brachvogel, Frydrychowicz, *Handbuch des Grundbuchrechts enthaltend die auf das materielle und formelle Grundbuchrecht sich beziehenden Gesetze, Verordnungen und Ausführungsbestimmungen mit Anmerkungen, für die Praxis zusammengestellt*, Berlin 1901, pp. 327–335.



**Figure 17.** Land register entry

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913–1953.

question. This number was used to mark the land in all other sections of the land register with entries related to it. It also contained sections to indicate changes in the composition of individual plots of land due to the addition or removal of individual plots of land. The list of rights pertaining to ownership included those rights that each landowner was entitled to.<sup>102</sup>

<sup>102</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, p. 15.



5.2 Land registers in Prussia

Bestands												
I. Verzeichnis der												
Laufende Nummer der Grundstücke.	Bis-herige laufende Nummer der Grundstücke.	Bezeichnung der Grundstücke.	Grundbuch.		Grundsteuer-mutter-rolle.	Gebäude-steuer-rolle.	Wirtschaftsart und Lage.	Größe.			Grundsteuer-reinertrag.	Gebäude-steuer-ungswert.
			Karten-blatt (Bl. Nr.)	Bl. Nr.				ha	qm	fl.		
1.	2.				Art.	Nr.						
1.		Bad Saarow	Bl. 1.	310.	50	98	Grünland, Weiden, Obstbaumgärten	16	01			260 50
2.		Saarnow		940								

Figure 18. List of component parts – land list, page 1

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913-1953.

Grundstücke.		81	
Bestand und Zuschreibungen.		Abreibungen.	
Zur laufenden Nummer der Grundstücke.		Zur laufenden Nummer der Grundstücke.	
1.	2.	3.	4.
1.	Am 1. Sept. 11. Blatt Nr. 6 der Pflanzkarte des Preuss. Staates vom 8. Januar 1914.		

Figure 19. List of component parts – land list, page 2

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913-1953.

II. Verzeichnis der mit dem Eigentume verbundenen Rechte.				
Laufende Nummer der Eintragung.	Laufende Nummer des beteiligten Grundstücks.	Bezeichnung des Rechtes.	Veränderungen.	Löschungen.

Figure 20. List of component parts – list of rights

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913-1953.

81

**Erste Abteilung.**

Eigentümer.	Saufende Nummer der Grund- stücke.	Grund des Erwerbes, Verzicht, Grundlage der Eintragung	Erwerbspreis, Wert, Feuerversicherungs- summe.
<i>Dr. Saarov - Piskunow Kaufmann Wohnung am Krossener Platz 6 in Saarow.</i>	<i>1</i>	<i>Abgeschlossen am 17 Oktober mit ein gemeinschaft- lich Piskunow Saarov dem 1. &amp; 2. Teil des 6. angehörigen am 8 November 1913. Nach dem auf Antrag des Grundbesitzers abgepfändet wird für zwei eingetragene am 8 Januar 1914.</i>	

Figure 21. Part I of the land register

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913–1953.

The Prussian land register was divided into three sections. The first included information on the person of the owner, the value of the property and the titles of acquisition, the second on limited rights in rem encumbering the property and the third on mortgages, land debt and annuities.<sup>103</sup> The owner was entered in section 1 of Part I, with a more detailed specification of his person (residence, occupation, etc.). The joint ownership was indicated by combining the names in parentheses. In section 3, the basis of acquisition (e.g. sentence, decree of inheritance, etc.) was entered. In the case of co-ownership, it also contained the ideal share of the individual owners or the legal relationship defining the co-ownership (e.g. matrimonial community of property). Section 4 was filled in only at the request of the owner by stating the purchase price, the estimated value and the amount of fire insurance.<sup>104</sup>

In section 3 of Part II, the following were entered: easements, real burdens (as encumbrances on land), hereditary right of construction, right of first refusal and other third party rights in rem (*Immobiliengerichtigkeiten*), then restrictions on the owner's disposal for the benefit of specified persons, and finally objections and reservations concerning ownership rights. Restrictions on the owner's capacity to act (such as due to minority, incapacitation, etc.) and restrictions imposed by law (e.g. so-called legal easements or parental or conjugal user

<sup>103</sup> B. Jelonek-Jarco, *Rękopisma wiary publicznej ksiąg wieczystych*, Warszawa 2011, pp. 63–64.

<sup>104</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, pp. 15–16.

## 5.2 Land registers in Prussia

Zweite				
Laufende Nummer der Eintragung.	Laufende Nummer der belasteten Grundstücke.	Lasten und Beschränkungen.		Zur laufenden Nummer der Eintragung.
		1.	2.	
1.	1.	<p>Die im Auftragsauftrag übertragene auf die Beibehaltung vom 16. Mai 1922            in der Beeskow-Beeskow-Beeskow-Beeskow am Sprenkelberg 1/2 Saarow.            1922.            Juliusoberretter.            Kanzleiassistent.</p>		1
2.	2.			

Figure 22. Part II of the land register, page 1

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913–1953.

81					
Abteilung.		Änderungen.		Löschungen.	
Eintragung.		Befugung.		Zur laufenden Nummer der Eintragung.	
1.	2.	3.	4.	5.	6.
<p>in Grotzoffen Nr. 3 vom 2100. April.            für den Vorraum            Juliusoberretter            Kanzleiassistent.</p>					

Figure 23. Part II of the land register, page 2

The Brandenburg Main State Archive, 6.6.105 GB 1.6 Amtsgericht Beeskow, reference number Rep. 105 GB K II Beeskow 7, Bad Saarow (bis 1938 Saarow), Kr. Beeskow-Storkow – Grundbuch Bd. 4 Bl. 76-100, 1913–1953.

rights) were not mentioned.<sup>105</sup> Section 5 was used to record changes to the rights recorded in this card, e.g. concessions of priority and additional co-liens on other lands. Section 6 was for the deletion of amendments, and Section 8 was for the deletion of the right itself.

Part III was structured almost identically to Part II, except that it still contained headings for amounts and their changes.<sup>106</sup>

A reservation (warning) was entered in Section 3 of Part II if it concerned a claim for transfer of ownership or another right belonging to Part II. Whereas in

<sup>105</sup> Ibidem, p. 16.

<sup>106</sup> Ibidem.





entry was accompanied by the handing in of a mortgage letter to the creditor. The possession of a mortgage letter was necessary for the assertion of a letter lien and for other actions involving the disposition of such a lien.<sup>112</sup> The issuing of mortgage letters fell within the jurisdiction of the land registry offices. The Land Registry Act specified essential and nonessential requirements for the content and form of the letter. The essential requirements were as follows:

1. Designation “mortgage letter” (possibly “land debt letter” or “annuity debt letter”);
2. Mention of the monetary amount of the mortgage and the designation of the land encumbered;
3. Letter must be signed and stamped.

In contrast, the non-essential requirements included:

1. Number of the land list;
2. Extract from the land register, containing:
  - 1) designation of the land as shown in the land register;
  - 2) identification of the land owner;
  - 3) contents of the mortgage entries, and if the entry refers to a document, also the contents of the document;
  - 4) concise designation of the content of entries that precede the mortgage in priority or have equal priority with it.

At the request of the interested parties, the extract may be supplemented if the contents of the land register have changed. If a document was prepared concerning the claim for which the mortgage was established, this document had to be attached to the mortgage letter. If its content also referred to other circumstances, it was sufficient to combine a publicly certified extract of the document with the letter.<sup>113</sup>

For letter liens (letter mortgage, land debt and annuity), the mortgage letter replaced the land register to some extent. With such rights, it was possible to transfer (and encumber) off the books via the mortgage bond and to transfer and encumber via the book. In the latter case, the regulations provided that the mortgage on which the letter was issued was to be registered only if the letter was submitted to the land registry office. These provisions also applied to letter land and annuity debt.<sup>114</sup>

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<sup>112</sup> A. Brand, *Die Grundbuchsachen in der gerichtlichen Praxis*, Berlin 1904, pp. 200–202.

<sup>113</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, p. 121.

<sup>114</sup> *Ibidem*, pp. 64–65.

## 5.2 Land registers in Prussia

Importantly, one of the most important features of the land register system was its close connection with the cadastre. The designation of real estate as a subject of law in the land register took place with reference to the cadastral data collected by the cadastral offices. The offices were in turn responsible for carrying out the relevant measurements and determining the boundaries of land plots. Coordination between the land registry offices and the cadastral offices assumed an immediate flow of information between these offices. Consequently, any physical change concerning a land parcel was immediately communicated to the competent land registry office to change the description in the land register. In turn, the court informed the cadastral office of changes in the legal status of the property.<sup>115</sup> Keeping an eye on changes in the cadastre was one of the most important duties of the mortgage judge.<sup>116</sup> The flow of information between the land registers and the cadastre as well as other registers will be presented in more detail in Chapter 9.

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<sup>115</sup> P. Blajer, *Z historii ksiąg gruntowych (Grundbücher)*, pp. 86–87.

<sup>116</sup> H. Henning, *op. cit.*, p. 90.

## CHAPTER 6

# *Registers of commerce, cooperatives, associations, water cooperatives*

In the following chapter, registers are presented which originated from a common basis, the commercial register (*Handelsregister*). Although they were not entirely based on the same legal provisions, in practice, they were very similar and served similar purposes. Of all the registers discussed, the register of cooperatives (*Genossenschaftsregister*) was the most similar to the commercial register. In practice, it was a variation of the commercial register but was introduced for a particular type of company, such as a cooperative. The subject of this chapter will therefore be the commercial cooperative association (*Vereinsregister*) and water cooperative registers (*Register für Wassergenossenschaften*). At the same time, it should be emphasized that the modern commercial register came into being relatively late, only in the middle of the 19th century.<sup>1</sup> This makes it all the more worthwhile to trace its history and organisation.

### *6.1 General issues*

The commercial register is a public register for the disclosure of the most important and legally stipulated commercial relations, which are essential to enhance the security of commercial trading. In other words, *the commercial register can be described as an officially maintained list of facts (data) that are of legal significance for trade.*<sup>2</sup> Furthermore, the commercial register serves

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<sup>1</sup> Z. Żabiński, *Rejestr handlowy*, Kraków 1946, pp. 13–14.

<sup>2</sup> A. Chelmoński, *Rejestr handlowy na tle dekretu z dnia 7 lutego 1919 r.*, Wilno 1929, p. 3.



## 6.2 Registers of legal entities in Prussia

as a means of control by state authorities over certain important commercial relations.<sup>3</sup> However, the purpose of this register is not to increase the certainty of trade-in profit-making enterprises but to increase the certainty of trade, i.e. of trade in goods or services provided by the merchant in the course of business.<sup>4</sup>

In principle, the commercial register is open to the public in formal and material terms and has legal certainty, thus serving to implement the principle of security of trade, as it prevents merchants involved in larger-scale commercial operations from evading fulfilment of their obligations by invoking the absence of proper representation when contracting them.<sup>5</sup>

The register of cooperatives and their associations is a public register, usually kept by a registry court for all cooperatives and their associations operating within the district of that court. The register serves as a means of disclosing the most important legal data concerning these organisations as provided for by law and of producing various substantive legal effects.<sup>6</sup> Therefore, it fulfils the same role as the commercial register.<sup>7</sup> The registers of cooperatives have been distinguished in those countries where cooperatives have taken an independent legal form. However, the principles on which the commercial register was based were most often used to regulate the register of cooperatives.<sup>8</sup> The legal nature of the register of cooperatives and the way it is organised determine that it fulfils many functions, among those attributed to public registers. In particular, these functions are: recording, control, information, disclosure and protection.<sup>9</sup>

## 6.2 Registers of legal entities in Prussia

In Germany, the reason for the creation of registers listing merchants was the incompleteness or untruthfulness of many partnership companies, which should list the partners personally liable for the company's debts. This state of affairs was attempted to be rectified by disclosing all partners in the public books. It was only later that sole traders began to be disclosed in them as well in order

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<sup>3</sup> Z. Żabiński, op. cit., p. 10.

<sup>4</sup> Ibidem, p. 13.

<sup>5</sup> Ibidem, p. 106.

<sup>6</sup> M. Wrzolek-Romańczuk, *Rejestr spółdzielni. Zagadnienia materialnoprawne i procesowe*, Warszawa 1986, p. 19.

<sup>7</sup> Z. Żabiński, op. cit., p. 13.

<sup>8</sup> M. Wrzolek-Romańczuk, op. cit., p. 13.

<sup>9</sup> Ibidem, p. 22. The particular functions of public registries were characterized in Chapter 1.

to show that their business was not a partnership and that they alone were responsible for its obligations. In German countries, a register of powers of attorney (*Prokurenregister*) was also known in addition to the company register (*Gesellschaftsregister*).<sup>10</sup> The primary purpose of the entries in the register and the notices based on them was therefore to disclose, for the protection of the public, the persons responsible for the activities of the registered companies and to disclose the powers of representation of the corporate representatives.<sup>11</sup>

A landmark for the establishment of commercial registers, General German Commercial Code (*Allgemeines Deutsches Handelsgesetzbuch*) of 1861, was adopted as a model for all German states, including Prussia. It came into force in Austria as early as 1863 and in northern Germany only in 1869.<sup>12</sup> The code introduced a uniform commercial register (*Handelsregister*) for the whole of Germany, which was kept at all trade courts (*Handelsgericht*). Its binding force also extended to the territories of the Prussian partition. All merchants with full rights, i.e. larger merchants, were obliged to register. Small merchants did not have to register. In principle, the registration court made entries on the basis of the parties' applications. Ex officio entry was an exception, limited to situations listed in the Code. However, the registration court could enforce registration by imposing penalties.<sup>13</sup> The Code has promoted the principle of public access to the register and the publication in journals of the most significant entries in it. In this way, no interested party could plead ignorance of the facts contained in the register.<sup>14</sup>

Its principles were subsequently taken over by the German Commercial Code of 1897.<sup>15</sup> The amendments introduced in the new Code were mainly editorial. The most important change was the uniform way of determining the meaning of a revealing entry in all cases.<sup>16</sup> Another change concerned the obligation to register merchants. The register distinguished between three

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<sup>10</sup> Z. Żabiński, op. cit., p. 15.

<sup>11</sup> A. Korn, *Das Neue Handelsgesetzbuch für das Deutsche Reich im Originaltext mit den preisgekrönten gemeinverständlichen Erläuterungen*, Berlin–Liepzig, 1901, p. 20.

<sup>12</sup> G. Paul, *Die Deutschen Prozessordnungen und die in Preußen geltenden Gesetze für Angelegenheiten der nicht streitigen Gerichtsbarkeit*, Berlin 1883, p. 167.

<sup>13</sup> Z. Żabiński, op. cit., p. 16.

<sup>14</sup> E. Długajczyk, *Historia, organizacja i archiwalne opracowanie rejestru handlowego (na przykładzie Archiwum Państwowego w Katowicach)*, Szkiecy Archiwalno-Historyczne, Issue 1, 1998, p. 154.

<sup>15</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005, p. 180.

<sup>16</sup> Z. Żabiński, op. cit., p. 17.

types of merchants subject to registration: persons engaged in commercial enterprise, beyond the scope of petty trading, who were merchants by operation of law regardless of registration in the commercial register. The second category consisted of persons running industrial enterprises which, depending on their type or size, required an establishment arranged in the manner of a merchant. These persons were considered merchants by virtue of their registration, even if they did not meet the requirements specified for the first group. The third group consisted of persons running an enterprise in connection with an agricultural or forestry holding. If their businesses were of a larger size, they could be entered in the commercial register. As a result of being entered, they acquired the status of a merchant.<sup>17</sup> Importantly, under German law, a merchant could be a natural or legal person, as well as a municipality and the State, in this case, the German Reich as a whole.<sup>18</sup>

However, it must be kept in mind that the German provisions on the commercial register were contained in various laws and regulations. The obligation to enter data and the manner of reporting were regulated when discussing individual matters, e.g. companies, partnerships, proxies, etc.<sup>19</sup> In addition to the aforementioned Commercial Code of 1897, these were mainly the Limited Liability Companies Act of 20 April 1892 and the Non-Contentious Jurisdiction Act of 17 May 1898.<sup>20</sup> In Prussia, the matter was also regulated by executive order of the Minister of Justice on 7 November 1899.<sup>21</sup>

Under the Code of 1861, the commercial register was kept by commercial courts (*Handelsgericht*) and in towns without such a court by district or municipal courts with civil divisions.<sup>22</sup> This provision was amended by the Code of 1897, which placed the obligation to keep registers on the courts of first instance.<sup>23</sup>

It is worth mentioning that a commercial register modelled on the German register was introduced in the territory of the former German occupation in

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<sup>17</sup> Handelsgesetzbuch vom 10. Mai 1897. Erstes Buch. Handelsstand, Reichsgesetzblatt, year 1897, pp. 219–240, Paragraphs 1–3.

<sup>18</sup> Willenbücher, *Das allgemeine Deutsche Handelsgesetzbuch mit Ausschluß des Seerechts für die Praxis* erläutert, Berlin 1891, p. 9.

<sup>19</sup> A. Chełmoński, op. cit., pp. 3–4.

<sup>20</sup> E. Długajczyk, op. cit., pp. 154–155.

<sup>21</sup> A. Chełmoński, op. cit., p. 29.

<sup>22</sup> S. Pułkownik, *Akta rejestrowe sądów toruńskich. Kancelaria i metody porządkowania*, In: *Archiwa instytucji wymiaru sprawiedliwości w służbie państwa i obywateli*, ed. J. Baranowski, U. Zarzycka-Sutter, Łódź 2001, p. 170.

<sup>23</sup> A. Chełmoński, op. cit., p. 31.

the Congress Kingdom (General Governorate of Warsaw – German: *Kaiserlich-deutsche Generalgouvernement Warschau*). This happened by virtue of the ordinance of 1 November 1917 on the commercial register.<sup>24</sup>

The register of cooperative societies (*Genossenschaftsregister*), on the other hand, was based on the German Cooperative Law, which came into force in Prussia in 1867.<sup>25</sup> Already a year later, however, it was replaced by a law issued on 4 June 1868 for the North German Association.<sup>26</sup> From 1871, this law was applicable throughout the Reich.<sup>27</sup> On 1 May 1889, however, a cooperative law common to the whole of the Second Reich was passed.<sup>28</sup> It is worth noting that this law, in its basic principles, has been in force in Germany to date.<sup>29</sup> The Regulation on the Register of Cooperative Societies of 11 July 1889 provided for it to be kept by the courts with jurisdiction over the commercial register and was an independent institution.<sup>30</sup>

The register of associations (*Vereinsregister*), on the other hand, was kept on the basis of Part II of Chapter I of Book I of the German Civil Code,<sup>31</sup> Decree of the Reich Chancellor of 12 November 1898<sup>32</sup> and the General Order of 6 November 1899.<sup>33</sup> The register of water cooperatives (*Register für Wassergenossenschaften*),

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<sup>24</sup> Ibidem, p. 6.

<sup>25</sup> M. Wrzolek-Romańczuk, op. cit., pp. 13–14.

<sup>26</sup> Gesetz vom 4. Juli 1868, betreffend die privatrechtliche Stellung der Erwerbs- und Wirtschafts-Genossenschaften, Bundesgesetzblatt des Norddeutschen Bundes, year 1868, pp. 415–433.

<sup>27</sup> Gesetz vom 27. März 1867, betreffend die privatrechtliche Stellung der Erwerb- und Wirtschafts-Genossenschaften, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1867, pp. 501–516.

<sup>28</sup> Gesetz vom 1. Mai 1889, betreffend die Erwerbs- und Wirtschaftsgenossenschaften, Reichsgesetzblatt, year 1889, pp. 55–93.

<sup>29</sup> K. Dąbrowski, T. Dąbrowski, *Rejestracja spółdzielni w niemieckim prawie spółdzielczym*, Rejent, Issue 4 (288), 2015, p. 26.

<sup>30</sup> Bekanntmachung vom 11. Juli 1889, betreffend die Führung des Genossenschaftsregisters und die Anmeldungen zu demselben, Reichsgesetzblatt, year 1889, pp. 150–167, Paragraph 1.

<sup>31</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Reichsgesetzblatt, year 1896, pp. 195–603, Paragraphs 21–79.

<sup>32</sup> Bekanntmachung (des Reichskanzlers) vom 12. November 1898, betreffend die durch Beschluß des Bundesraths vom 3. November 1898 genehmigten Bestimmungen über das Vereinsregister und das Güterrechtsregister, Centralblatt für das Deutsche Reich, year 1898, pp. 438–440.

<sup>33</sup> Allgemeine Verfügung (des Justizministers) vom 6. November 1899 über die Führung des Vereinsregister und des Güterrechtsregister, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1899, pp. 299–312.

on the other hand, was kept on the basis of the Prussian law of 1 April 1879 in those courts which kept the commercial register.<sup>34</sup>

During the period in question, the registration procedure for making an entry in the commercial register, in addition to the provisions concerning the Commercial Code, was also subject to the standards of the Civil Code and was regulated by Articles 1401–1460 and 1647–1798 concerning non-litigious proceedings.<sup>35</sup> Apart from the data itself, all amendments to the data were also subject to registration.<sup>36</sup> Merchants were required to submit data to the register. In practice, therefore, it depended on their will whether the required data were included in the register. Nonetheless, the judge could encourage them to make entries by imposing order-related penalties.<sup>37</sup> It was also up to the will of the person concerned whether or not to declare certain facts in the register. Such cases included, in particular, the declaration of ancillary industry carried out on a farm, although, as mentioned, the declaration implied the acquisition of the rights of a merchant.<sup>38</sup>

In sporadic cases, the registration court could also make an entry *ex officio*.<sup>39</sup> It was utterly inadmissible to make new entries or amendments *ex officio*.<sup>40</sup> This was the case with entries on the opening of competition, suspension and cancellation of competition proceedings, entries on the company's expiry and entries striking off entries which had been made but were inadmissible.<sup>41</sup> The procedure of the registry court when striking out or correcting entries *ex officio* was quite strictly defined in German law. Although such entries were admissible, the parties concerned had extensive possibilities to defend themselves against such court proceedings. Such persons had to be notified of the intention to issue an amendment order. They also had time to lodge an objection. Removal from the register could take place only after that period had expired or after the order dismissing the opposition had become final. Special provisions also applied to the procedure for striking out entries concerning the incorporation

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<sup>34</sup> Gesetz vom 1. April 1879, betreffend die Bildung von Wassergenossenschaften, Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1879, pp. 297–318.

<sup>35</sup> A. Chelmoński, *op. cit.*, pp. 122–125.

<sup>36</sup> *Ibidem*, p. 9.

<sup>37</sup> H. Könige, A. Pinner, F. Bondi, *Staub's Kommentar zum Handelsgesetzbuch. Erster Band Erster Halbband (§§1–177)*, Berlin–Leipzig 1921, p. 106.

<sup>38</sup> A. Chelmoński, *op. cit.*, p. 133.

<sup>39</sup> *Ibidem*, p. 10.

<sup>40</sup> *Ibidem*, p. 146.

<sup>41</sup> *Ibidem*, pp. 31–32.

of a joint-stock company, a limited joint-stock partnership and a limited liability company, and entries concerning the resolutions of these companies.<sup>42</sup>

Notification of entries in the commercial register and signatures to be kept in court had to be made in person for the record or reported in the form of officially certified documents. Certified documents were those on which the signature or handwritten mark had been confirmed by a court, notary public, or other authority empowered to do so under national law. However, a handwritten mark could only be confirmed by a court and a civil law notary.<sup>43</sup> The same form was required for the notification of a power of attorney. The legal representatives of the person concerned were required to prove it on the basis of certified documents.<sup>44</sup> It should be emphasized that it was also possible to apply for an entry by way of legal aid to a court other than the one having jurisdiction. However, in such cases, the competent court could reject the submitted application.<sup>45</sup>

The Court of First Instance was required to examine the facts reported regarding their compliance with the applicable law and their formality.<sup>46</sup> The German Non-Litigious Jurisdiction Act in para. 12 required the court to conduct an enquiry to determine the evidence it deemed necessary to make an entry. For non-litigious proceedings, the provisions of the Civil Procedure Act – on witness evidence, expert evidence and oath-taking proceedings – applied. However, the hearing of the parties was only possible in cases involving the court's supervisory activities.<sup>47</sup>

Each company (merchant or enterprise) was entered in turn in the appropriate book, in which at least two parallel pages were set aside for it.<sup>48</sup> No more than one identical company could be registered in the district of the same court of registration.<sup>49</sup> The data that had to be provided to the registration

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<sup>42</sup> Ibidem, pp. 153–154.

<sup>43</sup> H. Könige, A. Pinner, F. Bondi, *Staub's Kommentar zum Handelsgesetzbuch. Erster Band (Buch 1: Handelsstand. Buch 2: Handelsgesellschaften und stille Gesellschaft)*, Berlin 1912, p. 91.

<sup>44</sup> P. Siméon, *Handbuch zur Einführung in das Bürgerliche Gesetzbuch und seine Nebengesetze. Zweiter Band*, Berlin 1904, p. 208.

<sup>45</sup> H. Könige, A. Pinner, F. Bondi, *Staub's Kommentar zum Handelsgesetzbuch...*, Berlin 1912, p. 91.

<sup>46</sup> P. Siméon, *Lehrbuch der freiwilligen und streitigen Gerichtsbarkeit*, Berlin 1931, p. 196.

<sup>47</sup> A. Chelmoński, op. cit., pp. 128–129.

<sup>48</sup> P. Siméon, *Handbuch zur Einführung...*, pp. 209–210.

<sup>49</sup> A. Chelmoński, op. cit., p. 87.

court for the registration of various types of companies were specifically defined. The company application had to contain the following information:

1. Name, surname, status and place of residence of the partners (*den Namen, Vornamen, Stand und Wohnort jedes Gesellschafters*);
2. Company business name and the city of its seat (*die Firma der Gesellschaft und den Ort, wo sie ihren Sitz hat*);
3. Date of incorporation of the company (*den Zeitpunkt, mit welchem die Gesellschaft begonnen hat*).<sup>50</sup>

For a limited partnership, the names of the limited partners and the amount of their contribution had to be stated.<sup>51</sup> For a public limited company, however, it was necessary to state the name and registered office of the company, the object of its activity, the amount of the share capital, the date of adoption of the memorandum and articles of association, and the members of the management board. If the memorandum and articles of association contained special provisions regarding the duration of the company or the authority for members of the management board or liquidators to represent the company, this information also had to be notified to the register.<sup>52</sup> To establish a public limited company, it was necessary to bring together at least 5 shareholders who were individuals or companies.<sup>53</sup>

A separate file was also kept for each company, in which all the documents relating to that company that were filed with the register were kept. If a document had to be returned, a copy or extract had to be placed in the file.<sup>54</sup>

The registration of the association, on the other hand, required, in addition to the submission of the application itself, the original and a copy of the deed for the establishment of the association and copies of the documents for the appointment of the management board. The deed on the establishment of the association had to be signed by at least 7 members.<sup>55</sup>

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<sup>50</sup> F. Litthauer, *Handelsgesetzbuch vom 10. Mai 1897 unter Ausschluß des Seerechtp. Mit den ergänzenden Vorschriften des Bürgerlichen Gesetzbuch und Erläuterungen*, Berlin 1901, p. 124.

<sup>51</sup> H. Könige, A. Pinner, F. Bondi, *Staub's Kommentar zum Handelsgesetzbuch...*, Berlin-Leipzig 1921, p. 734.

<sup>52</sup> H. Könige, A. Pinner, F. Bondi, *Staub's Kommentar zum Handelsgesetzbuch. Erster Band Zweiter Halbband (§§178-342)*, Berlin-Leipzig 1921, p. 844.

<sup>53</sup> A. Korn, *Das Neue Handelsgesetzbuch für das Deutsche Reich im Originaltext mit den preisgekrönten gemeinverständlichen Erläuterungen*, Berlin-Leipzig, 1901 p. 94.

<sup>54</sup> A. Chelmoński, op. cit., p. 10.

<sup>55</sup> G. A. Grotefend, *Die Gesetze und Verordnungen sowie die Ausführungs-Anweisungen, Erlasse, Verfügungen a. a. der preußischen und deutschen Centralbehörden aus den*

Both the commercial register and the register of cooperatives were separate books kept by the clerk of the court under the supervision of one of the judges, bearing the title of register judge.<sup>56</sup> The powers of the court clerk (*Gerichtsschreiber*) included:

1. keep the register;
2. take an entry in the record for entry in the register;
3. accept signatures to be kept in court;
4. enter entries in the register;
5. sign the entries;
6. publicize entries;
7. submit copies of orders (handwritten and signed) to the appropriate persons);
8. permit inspection of the register and the letters stored with it;
9. issue and certify copies of entries and letters lodged with the register.<sup>57</sup>

If the Registrar did not have sufficient knowledge of the law necessary to assess the relations properly, statements for the record were required to be taken by the judge.<sup>58</sup>

The functions of the registry judge in relation to the commercial register, on the other hand, can be divided into the following categories:

1. issue orders, concerning entries in the register, in particular, determine the content of entries and notices;
2. manage and supervise the acts of the Registrar and, hence, settle complaints against him;
3. select letters for notices in the register;
4. issue certificates;
5. ensure that the registration activities prescribed by the Act are carried out.

The activity of the registry judge in maintaining the register can be divided according to the nature of the entries. These activities were partly declarative,

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*Gesetzsammlungen f. d. Kgr. Preussen u. d. Deutsche Reich, dem Reichs=Centralblatt, dem Justiz=Ministerialblatt, dem Ministerialblatt f. d. innere Verwaltung, dem Centralblatt f. d. Unterrichtsverwaltung, dem Kirchlichen Gesetz=und Verordnungsblatt, dem Amtsblatt des Reichs=Postamts, dem Eisenbahn=Verordnungsblatt, dem Centralblatt der Abgabengesetzgebung und andern amtlichen Veröffentlichungen, Düsseldorf 1897, p. 4.*

<sup>56</sup> A. Chelmoński, op. cit., p. 7.

<sup>57</sup> Allgemeine Verfügung vom 7. November 1899 über die Führung des Handelsregisters, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1899, pp. 313–333.

<sup>58</sup> A. Chelmoński, op. cit., pp. 71–72.



documenting the law, and partly law-making, depending on whether they were declarative or constitutive entries. The supervisory activity of keeping the register was of a special nature, as the registration judge was obliged to ensure that the prescribed entries were made. This function also entailed the power of the judge to compel the filing of entries and the necessary declarations by means of penalties. The judge's duties also included ensuring that the use of the company in contravention of the law was prosecuted.<sup>59</sup>

German law also entrusted the registration judge with a number of supervisory functions over the activities of joint-stock companies and limited liability companies. His duties included the supervision of their activities. In this respect, he ensured that the company bodies carried out the duties imposed on them by the law. The registration judge also had the power, in many cases, to settle disputes arising within companies and to substitute his decisions for the actions of their bodies, which had not been carried out or had not been carried out properly. Furthermore, when there was a risk that the company's activity could cease due to internal obstacles, the registration judge was to take actions of a supplementary and auxiliary nature. In this respect, he resolved formal disputes or substituted the actions of the corporate bodies with his decisions.<sup>60</sup> Pursuant to a provision of the German Commercial Code, the registry court with jurisdiction over the registration of a joint-stock company was to compel the members of the management board or liquidators to perform their duties under threat of penalties. These included, in particular, the obligation to convene a general meeting when the company was at risk of insolvency, to carry out the instructions of the supervisory board, to carry out the resolutions of the general meeting, to make the company's records available to shareholders, to make the books available to auditors and to pass resolutions by the general meeting in connection with their reports, to represent the company in legal proceedings and to provide security, to draw up the balance sheet by the liquidators and to deposit the books in a safe place after the liquidation of the company.<sup>61</sup>

In the maintenance of the commercial register, the bodies representing the merchants also had certain rights and duties. Their powers included ensuring that entries prescribed by law were executed and that the use of the company in contravention of the law was prosecuted. At the court's request, they issued

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<sup>59</sup> *Ibidem*, pp. 76–78.

<sup>60</sup> *Ibidem*, pp. 97–98.

<sup>61</sup> *Handelsgesetzbuch vom 10. Mai 1897. Zweites Buch. Handelsgesellschaften und stille Gesellschaft, Reichsgesetzblatt, year 1897, pp. 241–304, Paragraphs 240.1, 246.1, 250.2, 263.1, 267.1–2, 272.4, 299, 302.2, 319.*

opinions in cases of doubt as to whether entries had been made and as to the choice of newspaper to publish advertisements. In cases covered by these powers, traders had the right to appeal against the decision of the registration judge. The German Commercial Code, in para. 126 also imposed a duty on the trade associations to assist the trade court in order to protect against inconsistent entries and to rectify and supplement the commercial register.<sup>62</sup>

According to the German Commercial Code, the entire content of an entry after registration was subject to publication. Entries were published in the *Deutscher Reichsanzeiger* and in at least one other periodical designated by the court.<sup>63</sup> The notice was deemed to have been made on the day on which the last of the letters in which the announcement was made came out.<sup>64</sup>

In addition to the publication obligation, German law stipulated that the commercial register was formally open to the public and that everyone had the right to inspect its contents.<sup>65</sup> Inspection of the register and files was free of charge.<sup>66</sup> It also implemented the principle of material openness of the register in both the negative and positive sense. This means that everyone had to be aware of its contents, but if something was not announced in the register, it was not binding on third parties.<sup>67</sup> This principle was covered by para. 15 (1) of the German Commercial Code, which provided in general that: *Solange eine in das Handelsregister einzutragende Thatsache nicht eingetragen und bekannt gemacht ist, kann sie von demjenigen, in dessen Angelegenheiten sie einzutragen war, einem Dritten nicht entgegengesetzt werden, es sei denn, daß sie diesem bekannt war.*<sup>68</sup> In order to prove the actual legal position recorded in the register, it was possible to obtain copies of the entries in the register and the files filed with it.<sup>69</sup>

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<sup>62</sup> A. Chelmoński, op. cit., pp. 117–119.

<sup>63</sup> C. Kurtz, *Das Gerichtliche Registerwesen. Eine Sammlung der auf das Handels-, Genossenschafts-, Muster-, Börsen-, Vereins-, Güterrechts-, und Schiffs-Register bezüglichen gesetzlichen und instruktionellen Vorschriften mit den amtlichen Musterformularen und einem Anhang nebst Anmerkungen*, Berlin 1901, p. 15.

<sup>64</sup> A. Chelmoński, op. cit., p. 31.

<sup>65</sup> M. Wrzolek-Romańczuk, op. cit., p. 12.

<sup>66</sup> A. Korn, op. cit., p. 19.

<sup>67</sup> Z. Żabiński, op. cit., pp. 16–17.

<sup>68</sup> As long as a fact to be entered in the commercial register has not been recorded and published, it may not be pleaded against a third party by the person in whose affairs it was to be entered, unless the third party was aware of it.

<sup>69</sup> E. B. Auerbach, *Formularbuch für streitige Gerichtsbarkeit*, Berlin 1900, p. 188.

The procedure was similar in the case of the registration of a cooperative, which, through its registration in the register, acquired the status of a registered merchant within the meaning of commercial law.<sup>70</sup> This gave it legal personality and enabled it to acquire property and other rights in rem and to sue and be sued.<sup>71</sup> The application for entry in the register was submitted by the board of directors elected by the founders of the cooperative. The management board was required to register the cooperative, but the court had the right to refuse to do so.<sup>72</sup> The application for registration had to be accompanied by the original articles of association signed by at least seven founders of the cooperative, a copy of the documents attesting to the appointment of the management board and supervisory board, a certificate from the cooperative's auditing association that the cooperative had been admitted to membership of the association, and an opinion from the auditing association that the establishment of the cooperative for personal or economic reasons, in particular its financial situation, did not jeopardise the interests of its members or creditors.<sup>73</sup>

In turn, the registry court examined whether the application complied with the conditions provided for in the Cooperative Law. In particular, it examined whether the cooperative had been established correctly, whether all annexes had been attached to it, and whether the statutes adopted by the founders complied with the law. The court was entitled to refuse registration if, on the basis of an opinion of a cooperative association which had inspected the cooperative prior to its registration, it found that the interests of the cooperative's members or its creditors were threatened. It could also do so on the basis of erroneous, incomplete statutes or invalid adoption of cooperative statutes where the opinion of the cooperative revision association was missing or incomplete or negative.<sup>74</sup> The provisions of the statute, such as the name, seat and object of activity, were also subject to scrutiny. The court further checked whether personal or economic circumstances connected with the founders or the cooperative itself did not stand in the way of its registration, whether the initial capital was not too low, whether the contributions

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<sup>70</sup> Gesetz vom 1. Mai 1889, betreffend die Erwerbs- und Wirtschaftsgenossenschaften, Paragraph 17.2.

<sup>71</sup> K. Dąbrowski, T. Dąbrowski, op. cit., p. 29.

<sup>72</sup> Gesetz vom 1. Mai 1889, betreffend die Erwerbs- und Wirtschaftsgenossenschaften, Paragraph 11a.

<sup>73</sup> P. Siméon, *Lehrbuch des bürgerlichen Rechtes. Erste Hälfte Allgemeiner Teil und Schuldrecht (nebst Handels- und Wechselrecht)*, Berlin 1921, p. 135.

<sup>74</sup> Gesetz vom 1. Mai 1889, betreffend die Erwerbs- und Wirtschaftsgenossenschaften, Paragraphen 11–11a.

in kind were not overestimated, and whether the purpose of the cooperative fell within the concept of a cooperative, according to para. 1 of the Co-operative Act. The registry court was therefore reviewing in the substantive sense.<sup>75</sup>

As mentioned before, the judicial control and the activities of the founders of cooperatives were also inspected by the audit association. Its control was related to two fundamental issues: the initial capital and the personal capacity of the founders. Regarding the initial capital, the supervisory union assessed whether the minimum capital set by the founders was sufficient to carry out the planned activities. In principle, this should ensure that the cooperative is able to survive on its own without having to apply for public aid, subsidies or other external resources. The audit association further examined whether the founders guaranteed the prudent and diligent management of the cooperative's affairs. Above all, it was a question of the competence of the members of the board of directors, as it was they who had the statutory duty of care and responsibility for running the cooperative. Therefore, the association was obliged to state whether, in its opinion, the members of the management board had sufficient personal and professional competence. This involved an objective determination of facts such as a lack of education or experience in view of the type of activity envisaged. However, it was not the union's role to verify the professional CVs of the founders. It should, however, have checked that the founders had not been convicted of any criminal offences, especially intentional commercial offences. In order to carry out checks, the founders of a cooperative were required to provide the supervisory association with as complete a record as possible of the affairs of the cooperative to be established. However, the association was obliged to assess them objectively and observe good manners.<sup>76</sup>

As regards registration, the court published an extract of the statutes, which had to include: the date of registration of the statutes, the name and registered office of the cooperative, the object of its activity, the list of the members of the management board and their authorisation to represent the cooperative and the duration of the cooperative (if it was formed for a limited period).<sup>77</sup>

Prussian law also required the registration of every joining and withdrawing cooperative member. To this end, the courts also kept special registers of members.<sup>78</sup>

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<sup>75</sup> K. Dąbrowski, T. Dąbrowski, op. cit., pp. 35–36.

<sup>76</sup> Ibidem, pp. 36–37.

<sup>77</sup> Gesetz vom 1. Mai 1889, betreffend die Erwerbs- und Wirtschaftsgenossenschaften, Paragraph 12.2.

<sup>78</sup> E. Długajczyk, op. cit., p. 159.

During the proceedings for the registration of the association, the court inspected the submitted application and documents. If any deficiencies or errors were found, it was entitled to reject the application with the requirement to justify it. This decision could be appealed under the Code of Civil Procedure. If the registration took place, the court was obliged to notify the competent administrative authority, which could oppose the registration, if the activities of the association could be prohibited under the law on political, socio-political or religious associations. The objection could be challenged in court by the association's board. If the objection was not received, but the authority did not notify it, the court was obliged to withhold the registration for a period of six weeks after the notification was served on the administrative authority. After this period, the objection was deemed not to have been filed or to have been validly dismissed.<sup>79</sup>

The entries made in the registers were of different nature. Constitutive entries included entries concerning the establishment of joint-stock companies and limited liability companies, amendments to the articles of association (articles of association) of such companies, entries concerning the merger or transformation of companies, etc. The character of a constitutive entry was also that of a cooperative society, as only from that moment on did it acquire legal personality. German law also knew curing entries (removing deficiencies). This meant that if a company was entered in the register, it was not possible to hide from the person invoking the entry that the industry was not a trade profession or that it was petty trade.<sup>80</sup>

Importantly, despite the imposition of a publication obligation, the commercial register did not have a statutory credibility relating to all entries.<sup>81</sup> These entries did, however, create a presumption of veracity, arising from their public nature and from the obligation of the court of registration to examine the entries. This presumption was, however, removable.<sup>82</sup> According to both German commercial codes, a third party could only rely on the contents of the register in the sense that changes that were not disclosed in the register did not apply to it.<sup>83</sup> In principle, only the entry of a merchant under par. 5 of the German Commercial Code had the right granted that if a company was entered in the commercial register, then it could not be argued against the person who invoked

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<sup>79</sup> G. A. Grotefend, *op. cit.*, pp. 4–5.

<sup>80</sup> A. Chelmoński, *op. cit.*, pp. 30–31.

<sup>81</sup> M. Wrzolek-Romańczuk, *op. cit.*, p. 12.

<sup>82</sup> *Ibidem*, pp. 80–81.

<sup>83</sup> A. Chelmoński, *op. cit.*, p. 203.

the entry that the industry carried on under that company was not a commercial profession or that it did not go beyond the scope of small industry. The credibility of certain entries was also due to their law-making nature. The lack of public faith specifically distinguished the legal status of commercial and cooperative registers from land registers.<sup>84</sup>

According to the regulations of 1861, the commercial register consisted of three main sections, in which merchants and commercial companies (*Firmenregister*), powers of attorney (*Prokurenregister*) and legal relations of commercial companies (*Gesellschaftregister*) were registered. In areas where the Landrecht was in force, a fourth section was introduced, the register of matrimonial property rights.<sup>85</sup> In the register of firms, the following data were entered: the owner's data, the place of business, the firm, the time of registration, and remarks.<sup>86</sup> The register of companies, on the other hand, contained the following data: sequence number, company name, company seat, and legal relations of the company.<sup>87</sup> The following were entered in the register of proxies: the details of the merchant or firm appointing the proxy, the place of the proxy, the designation of the registration of the firm granting the proxy, the name of the proxy and the date of the entry. Limited partnerships and joint-stock companies were entered in the commercial register. Limited partnerships, in addition to data on the firm, registered office and limited partners, declared the amount of financial capacity of each limited partner. Public limited companies, on the other hand, obligatorily filed the memorandum of incorporation and stated the date of adoption of the articles of association, the company's name and registered office, the object and duration of its activity, the partners of the initial capital with the division into shares and the designation of the type of shares as registered or bearer. The company also declared the manner of reporting information about itself. In the register of property rights, the husband's name and a description of the legal and ownership relations of the marriage were entered.<sup>88</sup>

From 1874 onwards, a trade mark register was also kept for those entered in the commercial register. This register was used to register the trademarks used

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<sup>84</sup> Z. Żabiński, op. cit., pp. 17–18.

<sup>85</sup> O. Rudorff, *Die Vorschriften über die Führung des Handelsregisters sowie der Schiffs-, Genossenschafts-, Muster- und Zeichen-Register*, Hannover 1882, pp. 44–45.

<sup>86</sup> State Archive in Olsztyn, 42/292/0 Sąd Obwodowy w Ostródzie, reference number 15333, A. Firmen-Register vom 1 Marz 1862, [1862–1878] 1879–1902.

<sup>87</sup> Ibidem, reference number 15334, C. Gesellschafts-Register vom 1 Marz 1862, [1862].

<sup>88</sup> S. Pułkownik, op. cit., p. 170.

## 6.2 Registers of legal entities in Prussia

by merchants and companies. This register was introduced on the basis of the Trademark Protection Act.<sup>89</sup>

According to regulations introduced in 1897, the commercial register was divided into two parts. In Part A, companies, individual merchants, merchant companies and limited partnerships were entered. Part B, on the other hand, recorded joint-stock companies, limited partnerships with shares, limited liability companies and legal persons. The previous register of powers of attorney was abolished, as the data collected in it were incorporated into parts A and B of the register.<sup>90</sup>

The form of Part A included the following headings:

1. Current entry number (*Nummer der Eintragung*);
2. Business name and registered office of the merchant or company (*Firma; Ort der Niederlassung; Sitz der Gesellschaft*);
3. Name and surname of the merchant or shareholders (*Bezeichnung des Einzelkaufmanns oder der persönlich haftenden Gesellschafter*);
4. Details of any commercial proxies (*Prokura*);
5. Legal situation of the buyer, e.g. opening of bankruptcy (*Rechtsverhältnisse bei Einzelkaufleuten*);
6. Designation of the legal form of the company (*Rechtsverhältnisse bei Handelsgesellschaften*);

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1.	2.	3.	4.	5.
Nummer der Eintragung.	Firma Ort der Niederlassung Sitz der Gesellschaft.	Bezeichnung des Einzelkaufmanns oder der persönlich haftenden Gesellschafter.	Prokura.	Rechtsverhältnisse bei Einzelkaufleuten.
1.	<i>H. Krakow</i> <i>Berlin</i>	<i>von Kaufmann</i> <i>Hilfmann Krakow</i> <i>Konrad zu Berlin</i> <i>ein</i>		

Figure 26. Page 1 of the commercial register A

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1716, Rejestr handlowy A, 1900–1938.

<sup>89</sup> Gesetz über Markenschutz vom 30. November 1874, Reichsgesetzblatt, year 1874, pp. 143–146.

<sup>90</sup> P. Siméon, *Lehrbuch der freiwilligen und streitigen Gerichtsbarkeit*, p. 194.

Nummer der Firma <span style="float: right;">22 22 11</span>		
6.	7.	8.
Rechtsverhältnisse bei Handelsgesellschaften.	Geschäftsnummer; Tag der Eintragung; Unterschrift.	Bemerkungen.
	H.P.A. 11 1 31. Oktober 1906  H. P. A. 11	Auf dem Firmenregister Nr. 9 für für übertragung am 31. Oktober 1906.  H. P. A. 11

**Figure 27.** Page 2 of the commercial register A

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1716, Rejestr handlowy A, 1900–1938.

7. File number, date of registration and name of the registrant (*Geschäftsnummer; Tag der Eintragung; Unterschrift*);
  8. Remarks concerning entries (*Bemerkungen*).
- The form of Part B, on the other hand, included:
1. Registration number (*Nummer der Eintragung*);
  2. Designation of the company and its seat (*Firma und Sitz*);
  3. Business object of the company (*Gegenstand des Unternehmens*);
  4. Details of the amount of land and share capital (*Grund oder Stammkapital*);
  5. Data on members of the management board or representatives of the company (*Vorstand, persönlich haftende Gesellschafter; Geschäftsführer; Liquidatoren*);
  6. Details of any commercial proxies (*Prokura*);
  7. Information about the legal form of the company, the date of conclusion of the contract, adoption of the articles of association and any amendments to the contract or management (*Gesellschaftsvertrag oder Satzung; Vertretungsbefugnis*);
  8. Information about the cessation of business (*Auflösung; Konkurs; Fortsetzung; Nichtigkeit; Erlöschen der Firma*);
  9. File number, date of registration, signature (*Geschäftsnummer; Tag der Eintragung; Unterschrift*);
  10. Remarks (*Bemerkungen*).<sup>91</sup>

<sup>91</sup> P. Siméon, *Handbuch zur Einführung...*, p. 208.



## 6.2 Registers of legal entities in Prussia

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1.	2.	3.	4.	5.	6.
Nummer der Eintragung.	Firma und Sitz.	Gegenstand des Unternehmens.	Grund- oder Stammkapital.	Borband: persönlich haltende Gesellschafter; Geschäftsführer; Liquidatoren.	Prokura.

**Figure 28.** Page 1 of the commercial register B

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1718, Rejestr handlowy B, 1905–1931.

16

Nummer der Firma			
7.	8.	9.	10.
Gesellschaftsvertrag oder Satzung; Vertretungsbefugniß.	Auflösung; Konkurs; Fortsetzung; Nichtigkeit; Erlöschn der Firma.	Geschäftsnummer; Tag der Eintragung; Unterschrift.	Bemerkungen.

**Figure 29.** Page 2 of the commercial register B

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1718, Rejestr handlowy B, 1905–1931.

An alphabetical list of companies registered in the district was also kept for the commercial register:

<p><i>Handwritten:</i> 1. <u>Albrecht C.</u></p>	<p><b>A.</b> <i>Alphabetisches Namensverzeichnis der Firmen.</i></p>	<p><i>Handwritten:</i> No. des Registers: <u>FR 704 J. 22</u></p>
------------------------------------------------------	--------------------------------------------------------------------------	---------------------------------------------------------------------------

**Figure 30.** Alphabetical index to the commercial register – first version

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Neuruppin, reference number Rep. 5E AG Neuruppin 689, Alphabetisches Namensverzeichnis zum Firme-, Gesellschafts-, und Prokurenregister bzw. Handelsregister A und B sowie zum Genossenschaftsregister, no dates.

I Abteilung.  
*Kommen die*

Alphabetisches Verzeichnis der im Handelsregister eingetragenen Firmen

Familienname	Abnahme	Stofswort	Spinnort und Abtheilung und Nummer des Handelsregisterbuchs
Meines Minning Kind	Stipulard Kind	Offenbr. App ev	HRA 12 " 24

**Figure 31.** Alphabetical index to the commercial register – second version, page 1

State Archive in Olsztyn, 42/292/0 Sąd Obwodowy w Ostródzie, reference number 15332, Alphabetisches Verzeichnis für der Firmenregister und Handelsregister A und B, 1896.

II Abteilung.

Alphabetisches Verzeichnis der im Handelsregister eingetragenen Firmen

Firma	Stof	Spinnort und Abtheilung und Nummer des Handelsregisterbuchs
Paul Minning's Kantinen & Morshall	Offenbr. App ev	HRA 24 " 40 erlößt 15/10.17

**Figure 32.** Alphabetical index to the commercial register – second version, page 2

State Archive in Olsztyn, 42/292/0 Sąd Obwodowy w Ostródzie, reference number 15332, Alphabetisches Verzeichnis für der Firmenregister und Handelsregister A und B, 1896.

6.2 Registers of legal entities in Prussia

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Nummer des

1.	2.	3.
Nummer der Eintragung	Name und Sitz des Vereins.	Satzung.
1.	<i>eingetragener Verein Vereinsmitgliedern Koerlin an 1 Pers.</i>	<i>Ein Satzung ist am 10. April 1900 verfasst.</i>

Figure 33. Page 1 of the register of associations

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1720, Vereinsregister 1900–1942.

Vereinsregisters /

f+  
8.3

4.	5.	6.
Vorstand.	Auflösung; Entziehung der Rechtsfähigkeit; Konkurs; Liquidatoren.	Bemerkungen.
<i>Leitungsmitglied August Jagel Mitverwalter Wilhelm Seilke Kassiermann Karl Templow Landschaftsleiter Karl Pede Schatzmeister Karl Besseler Kassiermann Gustav Müller Büchhalter Hermann Gaerell Geldbesitzer Hans-Johann Hoffmann Leitungsmitglied Wilhelm Riedrich Kassiermann Karl Liebmann Schriftführer in Koerlin 1 Pers. neofu- geft</i>		
<i>11. Mai 1900 Hoff</i>		

Figure 34. Page 2 of the register of associations

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1720, Vereinsregister 1900–1942.

<i>F.</i>		
<i>Name und Sitz</i>	<i>Sitz</i>	<i>N<sup>o</sup> für den Eintrag, f. d. V.</i>
<i>Freiw. Illige Feuerweh</i>	<i>West. Buchholz Münchehofe</i>	<i>9. 10. 1</i>

**Figure 35.** Form of an alphabetical list of associations

The Brandenburg Main State Archive, 3.1.2.260 AG, Amtsgerichte, reference number Rep. 260 AG Märkisch Buchholz 13, Namensverzeichnis zum Vereinsregister des Amtsgerichts Märkisch-Buchholz, no dates.

A form similar to Part B of the commercial register also had a register of associations, which included the following columns:

1. Entry number (*Nummer der Eintragung*);
2. Name and seat of the association (*Name und Sitz des Vereins*);
3. Articles of association (*Satzung*);
4. Management board (*Vorstand*);
5. Information on cessation of business (*Auflösung; Entziehung der Rechtsfähigkeit; Konkurs; Liquidatoren*);
6. Remarks (*Bemerkungen*).<sup>92</sup>

In addition to the register of associations, an alphabetical list of associations registered with a particular court was kept.<sup>93</sup>

In turn, the cooperative register form contained the following:

1. Current number (*Nummer der Eintragung*);
2. Business name and seat (*Firma und Sitz*);
3. Business object (*Gegenstand des Unternehmens*);
4. Amount of security in the case of cooperatives with limited liability and specification of the highest number of shares (*Bei Genossenschaften mit beschränkter Haftpflicht: Haftsumme; höchste Zahl der Geschäftsanteile*);
5. Data on members of the management board and liquidators (*Vorstand; Liquidatoren*)

<sup>92</sup> Ibidem, p. 215.

<sup>93</sup> Bekanntmachung (des Reichskanzlers) vom 12. November 1898, betreffend die durch Beschluß des Bundesraths vom 3. November 1898 genehmigten Bestimmungen..., Paragraph 11.

## 6.2 Registers of legal entities in Prussia

1.	2.	3.	4.	5.
Nummer der Ein- tragung.	Firma und Sig.	Gegenstand des Unternehmens.	Bei Genossenschaften mit beschränkter Haftungspflicht: Haftsumme; höchste Zahl der Geschäfts- anteile.	Vorstand; Liquidatoren.
	<i>Kaufmanns-Handelsgesellschaft</i>	<i>Handelsgeschäfte</i>	<i>100 Mark.</i> <i>100 Geschäftsanteile</i>	<i>Kaufmanns-Handelsgesellschaft</i> <i>Vorstand: Kaufmanns-Handelsgesellschaft</i> <i>Liquidatoren: Kaufmanns-Handelsgesellschaft</i>

**Figure 36.** Page 1 of the register of cooperatives

State Archive in Szczecin, 65/781/0 Sąd Obwodowy w Łobzie, reference number 1303, Amtsgerichts Labes [Łobez] Genossenschaftsregister. Band.III., 1824–1848 [incorrectly dated – HC].

Nummer der Genossenschaft <i>49</i>			
6.	7.	8.	9.
a) Statut; b) Form der Bekanntmachungen; c) Zeitdauer; d) Geschäftsjahr; e) Form für die Willenserklärung des Vorstandes und der Liquidatoren; f) Vertretungsbefugnis.	Auflösung; Konturs; Fortsetzung; Nichtigkeit.	Geschäftsnummer; Tag der Eintragung; Unterschrift des Gerichtsschreibers.	Bemerkungen.
<i>a, Statut vom 1. März 1911</i>		<i>April 18 92</i>	<i>Die Liquidation beauftragt</i> <i>1. Kaufmanns-Handelsgesellschaft</i> <i>2. Kaufmanns-Handelsgesellschaft</i>

**Figure 37.** Page 2 of the register of cooperatives

State Archive in Szczecin, 65/781/0 Sąd Obwodowy w Łobzie, reference number 1303, Amtsgerichts Labes [Łobez] Genossenschaftsregister. Band.III., 1824–1848 [incorrectly dated – HC].

- 6. a. articles of association (*Statut*); b. form of notice (*Form der Bekanntmachungen*); c. duration of the cooperative (*Zeitdauer*); d. financial year (*Geschäftsjahr*); e. form of declaration of intent of the management board and liquidators (*Form der Willenserklärungen des Vorstandes der Liquidatoren*); f. power of representation (*Vertretungsbefugnis*)

Laufende Nummer.	G e n o s s e n .			Weitere Geschäftsanteile.	
	Tag der Eintragung.	Name und Beruf.	Wohnort.	Tag der Eintragung.	Zahl der weiteren Geschäftsanteile.
1.	2.	3.	4.	5.	6.
1881.	11. Decem. 1891.	Leyerle, Anw. v. d. Schloffer.	Prinzess. Stab.		

**Figure 38.** Page 1 of the list of cooperative members

State Archive in Bydgoszcz, 6/2254/0 Rejestrzy handlowe, żeglugowe, stowarzyszeń i spółdzielni Sądu Powiatowego w Bydgoszczy, reference number 1588, Liste der Genossen des Bromberger Volksbau Vereins e.G.m.b.H. [Eingetragene Genossenschaft mit beschränkte Haftpflicht], 1891–1896.

7. Particulars of liquidation, winding-up, insolvency and legal capacity (*Auflösung; Konkurs; Fortsetzung; Nichtigkeit*);
8. File number, date of registration and signature of the recording clerk (*Geschäftsnummer; Tag der Eintragung; Unterschrift des Gerichtsschreibers*);
9. Remarks (*Bemerkungen*).<sup>94</sup>

Apart from the register, the court also kept a list of the cooperative's members,<sup>95</sup> with the following form:

1. Sequential number (*Laufende Nummer*)  
Member (*Genossen*):
2. Date of entry (*Tag der Eintragung*)
3. Name and surname and occupation (*Name und Beruf*)
4. Place of residence (*Wohnort*)  
Subsequent holdings (*Weitere Geschäftsanteile*):
5. Date of entry (*Tag der Eintragung*)
6. Amount of subsequent holdings (*Zahl der weiteren Geschäftsanteile*)  
Application (*Ausscheiden*):
7. Date of entry (*Tag der Eintragung*)
8. Reason for Application (*Grund des Ausscheidens*)

<sup>94</sup> Allgemeine Verfügung vom 8. November 1899 über die Führung des Genossenschaftsregister, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, pp. 334–339.

<sup>95</sup> P. Siméon, *Lehrbuch des bürgerlichen Rechtes...*, p. 137.

## 6.2 Registers of legal entities in Prussia

A u s s c h e i d e n .			B e m e r k u n g e n .
Tag der E i n t r a g u n g .	Grund des Ausscheidens	Tag des A u s s c h e i d e n s .	
7	8.	9.	10

**Figure 39.** Page 2 of the list of cooperative members

State Archive in Bydgoszcz, 6/2254/0 Rejestrzy handlowe, żeglugowe, stowarzyszeń i spółdzielni Sądu Powiatowego w Bydgoszczy, reference number 1588, Liste der Genossen des Bromberger Volksbau Vereins e.G.m.b.H. [Eingetragene Genossenschaft mit beschränkte Haftpflicht], 1891–1896.

A.		
Vorname	Nitz	Eingetrag. zum Grundstücken verpflichtet
Alf-Schadower	Par-ami-Par- Hl-Klaster	13. 8. 1891.
Schadower	e. G. m. b. H.	
Alf-Schadower	e. G. m. b. H.	20. 8. 1891.

**Figure 40.** Alphabetical index for the register of cooperatives

The Brandenburg Main State Archive, 3.1.2.260 AG, Amtsgerichte, reference number Rep. 260 AG Märkisch Buchholz 3, Namensverzeichnis zum Genossenschaftsregister, no dates.

### 9. Date of Application (*Tag des Ausscheidens*)

### 10. Remarks (*Bemerkungen*).<sup>96</sup>

Apart from the register of cooperative members, an alphabetical index of cooperatives registered in the district was kept.

The register of water cooperatives introduced by the Prussian law of 1 April 1879 was similar in its basic principles to the register of cooperatives.<sup>97</sup> Nevertheless, it was kept separately and had a different form consisting of the following headings:

1. Sequence number (*Laufende Nummer*);
2. Name of the cooperative (*Name der Genossenschaft*);

<sup>96</sup> Bekanntmachung vom 1. Juli 1899, betreffend die Führung des Genossenschaftsregisters und die Anmeldungen zu diesem Register, Reichsgesetzblatt, year 1899, pp. 347–363.

<sup>97</sup> Gesetz vom 1. April 1879, betreffend die Bildung von Wassergenossenschaften, pp. 297–318.

<b>Register für Wassergenossenschaften.</b>			
Laufende Nummer.	N a m e der Genossenschaft.	S i t z der Genossenschaft.	R e c h t s v e r h ä l t n i s s e der Genossenschaft.
1.	2.	3.	4.

**Figure 41.** Model register of water cooperatives

Allgemeine Verfügung vom 9. September 1879, betreffend die von den Gerichten zu führenden Register für Wassergenossenschaften, Gesetz vom 1. April 1879 (Ges.-Samml. S. 297), Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1879, pp. 337–339.

3. Seat of the cooperative (*Sitz der Genossenschaft*);
4. Legal relations of the cooperative (*Rechtsverhältnisse der Genossenschaft*).

However, despite the relatively simple form, a number of pieces of information were entered into the register as extracts from the application for registration:

1. Date of the articles of association;
2. Name and seat of the cooperative;
3. Purpose for which the cooperative was established;
4. Period of existence of the cooperative (if limited);
5. Family names and place of residence of the management board members;
6. Form in which notices to be published by the cooperative and the official journals in which notices to the public are to be published;

<b>Verzeichnis der Mitglieder der Wassergenossenschaft.</b>				
Laufende Nummer.	Vor- und Zuname.	Wohnort.	Tag des Ausscheidens.	Tag der Anmeldung des Austritts. (§. 29 Abs. 2 des Gesetzes.)
1.	2.	3.	4.	5.

**Figure 42.** Model index of members of a water cooperative

Allgemeine Verfügung vom 9. September 1879, betreffend die von den Gerichten zu führenden Register für Wassergenossenschaften, Gesetz vom 1. April 1879 (Ges.-Samml. S. 297), Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1879, pp. 337–339.



## 6.2 Registers of legal entities in Prussia

7. Form in which the board is to make declarations of intent and sign documents on behalf of the cooperative (if the articles of association so provide).

In addition to the register, a list of members was kept containing the following information:

1. Sequence number (*Laufende Nummer*);
2. First name and surname (*Vor und Zuname*);
3. Place of residence (*Wohnort*);
4. Date of application (*Tag des Ausscheidens*);
5. Date of reporting application (*Tag der Anmeldung des Austritts*).<sup>98</sup>

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<sup>98</sup> Allgemeine Verfügung vom 9. September 1879, betreffend die von den Gerichten zu führenden Register für Wassergenossenschaften, Gesetz vom 1. April 1879 (Ges.-Samml. S. 297), Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1879, pp. 337–339.

## CHAPTER 7

### *Maritime and inland ship registers*

The next two court registers kept in the Kingdom of Prussia were for the registration of sea and inland waterway vessels. The very idea of registering ships, however, originated not in Prussia but in England as a response to the needs of domestic shipping and shipbuilding. The ship register found its classical expression in the Navigation Act of 9 October 1651, whereby ships had to be officially registered by their ownership and type. However, the keeping of a register was not regulated in detail until 1696.<sup>1</sup>

In Prussia, the beginnings of the codification of maritime commercial law are linked to the Prussian Landrecht. Also codifying maritime commercial law was Book V of the General German Commercial Code (*Allgemeines Deutsches Handelsgesetzbuch*), subsequently implemented as Book IV in the German Commercial Code of 10 May 1897 as *Seehandel*.<sup>2</sup>

The General German Commercial Code, in Articles 432 et seq., mandated the establishment of a register of seagoing ships (*Seeschiffsregister*). This register should contain the information required to establish the identity, ownership and nationality of ships. Its main purpose was to provide information on the right to fly the flag and as a basis for issuing maritime passports and other ship documents. In accordance with the provisions of the Commercial Code, the Ship Register served exclusively public law purposes. However, the individual German states located by the sea (with the exception of Hamburg) have given it a private-law meaning in their introductory laws to the General German Commercial Code.<sup>3</sup>

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<sup>1</sup> T. Stawecki, *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005, p. 195.

<sup>2</sup> W. Sowiński, *Zarys morskiego prawa handlowego*, Gdańsk 1946, p. 5.

<sup>3</sup> A. Nußbaum, *Die freiwillige Gerichtsbarkeit im Reiche und in Preußen*, Berlin 1900, p. 166.

The ship register was designed as a ship mortgage book in which the form of a pledge entry in the ship register was adopted for pledging, or more precisely, for mortgaging. This new form took the place of the older, “symbolic” form of pledge, which, according to paras. 300 to 305 of book I of chapter 20 of the Prussian Landrecht, followed through the transmission of certified copies of certain acts relating to the ship and a judicial or notarial lien letter.<sup>4</sup> The provisions of the General German Commercial Code were replaced by the Act of 25 October 1867 on the nationality of merchant ships and their right to fly the federal flag.<sup>5</sup> The provisions of the law were also supplemented by an executive order issued on the same day.<sup>6</sup> Both acts were superseded by the Act of 22 June 1899 on the right to fly the flag of merchant ships of Member States (Flag Act).<sup>7</sup>

The register of inland waterway vessels (*Binnenschiffsregister*) was kept under the Inland Navigation Act.<sup>8</sup> The general regulation of 11 December 1899 on the maintenance of the shipping register<sup>9</sup> was also an important piece of legislation for both ship registers, as were the provisions on the merchant register to which the relevant regulations referred.<sup>10</sup> Following the model of the maritime ship register, the Inland Navigation Act introduced an inland ship register. However, this register was primarily of a private-law nature and was intended mainly for the purpose of mortgaging ships.<sup>11</sup> If a ship was not entered in the register, it was treated like other immovable property and could only be pledged as security.<sup>12</sup>

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<sup>4</sup> Powszechnie prawo krajowe dla państw pruskich, cz. 1, t. 2, Poznań 1826, pp. 466–467.

<sup>5</sup> Gesetz vom 25. Oktober 1867, betreffend die Nationalität der Kauffahrtschiffe und ihre Befugniß zur Führung der Bundesflagge, Bundesgesetzblatt des Norddeutschen Bundes, year 1867, pp. 35–39.

<sup>6</sup> Verordnung vom 25. Oktober 1867, betreffend die Bundesflagge für Kauffahrteischiffe, Bundesgesetzblatt des Norddeutschen Bundes, year 1867, p. 39.

<sup>7</sup> Gesetz vom 22. Juni 1899, betreffend das Flaggenrecht der Kauffahrteischiffe, Reichsgesetzblatt, year 1899, pp. 319–325.

<sup>8</sup> Gesetz vom 15. Juni 1895, betreffend die privatrechtlichen Verhältnisse der Binnenschiffahrt, Reichsgesetzblatt, year 1895, pp. 301–340; Bekanntmachung des Textes des Gesetzes, betreffend die privatrechtlichen Verhältnisse der Binnenschiffahrt, in der vom 1. Januar 1900 an geltende Fassung, vom 20. Mai 1898, Reichsgesetzblatt, year 1898, pp. 868–903.

<sup>9</sup> Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1899, pp. 753–778.

<sup>10</sup> P. Siméon, *Handbuch zur Einführung in das Bürgerliche Gesetzbuch und seine Nebengesetze. Zweiter Band*, Berlin 1904, p. 216.

<sup>11</sup> A. Nußbaum, op. cit., pp. 165–167.

<sup>12</sup> J. Bachem, *Staatslexikon. Vierter Band*, Freiburg im Breisgau, 1911, p. 1082.

Both ship registers were, in principle, maintained by the courts of first instance. However, the applicable rules allowed exceptions to this rule. In Hamburg, for example, the registers were kept by the Deputation for Trade and Navigation, an administrative body. In Rostock and Wismar in Mecklenburg, the registers were kept by the magistrates. The registration of a ship was the responsibility of the registration authorities responsible for the home port or home town, i.e. the port or place prevailed from which the shipping was carried out.<sup>13</sup>

In the maritime ship register (*Seeschiffsregister*), merchant ships entitled to fly the imperial flag were entered, i.e. those which were used for maritime navigation and were the exclusive property of Reich citizens. In the inland ship register (*Binnenschiffsregister*), on the other hand, steamships and self-propelled ships with a deadweight of more than 15,000 kg and other ships with a deadweight of more than 20,000 kg were registered.<sup>14</sup> The register shall record the most important factual and legal circumstances regarding the ship, such as the name and type of the ship, the results of the official measurements of the ship (in the case of inland vessels, only the deadweight and engine power), the place and time of construction, the home port or place of registration, the name and any other further specification of the shipowner or operator, the legal basis for the acquisition of the ship.<sup>15</sup> All these facts and legal relations had to be reported to the registrar and substantiated.<sup>16</sup> However, no special form was envisaged for notifications. Respectively, they could not be made both in writing and orally.<sup>17</sup> On the basis of the registration, a registration certificate for seagoing vessels (ship's certificate) or a certificate for inland vessels (ship's letter) was issued.<sup>18</sup> These

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<sup>13</sup> Gesetz vom 22. Juni 1899, betreffend das Flaggenrecht der Kauffahrteischiffe, Paragraph 6 and Gesetz vom 15. Juni 1895, betreffend die privatrechtlichen Verhältnisse der Binnenschiffahrt, Paragraph 122.

<sup>14</sup> P. Siméon, *Lehrbuch der freiwilligen und streitigen Gerichtsbarkeit*, Berlin 1931, p. 201.

<sup>15</sup> A. Nußbaum, op. cit., pp. 167–169.

<sup>16</sup> Gesetz vom 22. Juni 1899, betreffend das Flaggenrecht der Kauffahrteischiffe, Paragraph 12 and Gesetz vom 15. Juni 1895, betreffend, die privatrechtlichen Verhältnisse der Binnenschiffahrt, Paragraph 124.

<sup>17</sup> Allgemeine Verfügung vom 28. April 1896, betreffend die Führung des Schiffsregisters nach dem Gesetze über die privatrechtlichen Verhältnisse der Binnenschiffahrt vom 15. Juni 1895 (Reichs-Gesetz. S. 301ff), Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1896, p. 132.

<sup>18</sup> P. Siméon, *Lehrbuch der freiwilligen und streitigen Gerichtsbarkeit*, p. 202.

documents had to be held on board the vessel at all times,<sup>19</sup> as they were proof of the nationality of the vessel concerned.<sup>20</sup>

If there were changes in the facts or legal relations to be registered, they had to be reported to the register. At the same time, the ship's certificates or lists had to be submitted so that the court would note the changes. Similarly, when a seagoing or inland waterway vessel was shipwrecked or rendered unrepairable, this had to be done. In the case of seagoing vessels, the loss of the right to fly the flag of the German Reich was also a registration requirement. In this case, the ship's certificate had to be cancelled and deregistered. A change of ownership of a vessel was also subject to registration.<sup>21</sup> It should be noted, however, that registration was not a condition for a change in the legal relationship.<sup>22</sup>

As mentioned, applications for registration and the submission of ship documents and certificates were secured by legal compulsion. For inland waterway vessels, an administrative criminal procedure was used for enforcement, and in the case of seagoing vessels, an ordinary criminal procedure. In inland navigation law, coercion also included the registration of the vessel. However, coercion did not apply to seagoing vessels.<sup>23</sup>

Other rules were established by the legislature for the maritime pledge. The whole subject matter was standardised for both registers in sections 100 to 123 of the Flag Act and supplemented by the provisions of the General Order of 11 December 1899. The procedure was analogous to that for land registers,<sup>24</sup> thus, unlike shipownership, the mortgage only arose through registration in the ship register.<sup>25</sup> The differences accumulated in the following relationships:

1. with regard to a mortgage on a ship, no mortgage note was issued, but only the registration of the mortgage on the ship was required;

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<sup>19</sup> Gesetz vom 22. Juni 1899, betreffend das Flaggenrecht der Kauffahrteischiffe, Paragraphs 10–11 and Gesetz vom 15. Juni 1895, betreffend die privatrechtlichen Verhältnisse der Binnenschifffahrt, Paragraph 125.

<sup>20</sup> W. Sowiński, op. cit., p. 16.

<sup>21</sup> Gesetz vom 22. Juni 1899, betreffend das Flaggenrecht der Kauffahrteischiffe, Paragraphs 13, 18–19 and Gesetz vom 15. Juni 1895, betreffend die privatrechtlichen Verhältnisse der Binnenschifffahrt, Paragraph 126.

<sup>22</sup> A. Nußbaum, op. cit., pp. 167–169.

<sup>23</sup> P. Siméon, *Handbuch zur Einführung...*, p. 217.

<sup>24</sup> *Ibidem*.

<sup>25</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Reichsgesetzblatt, year 1896, pp. 195–603, Paragraph 1260.

2. when a debt deed was presented to the court of registration, it should be accompanied by a note of entry and a brief description of entries preceding or equivalent to the pledge; this note was made by the judge and the court clerk;<sup>26</sup>
3. the ship register, even if it concerns registered pledges, was not subject to a public faithfulness similar to that of land registers;
4. the ship register, unlike land registers, was public, i.e. there were no restrictions on the right to inspect it.<sup>27</sup>

Otherwise, there was a fundamental similarity between the pledge entries in the ship register and the land register. Accordingly, entries in the register were regularly made only upon request. In addition, all authorisations and other declarations required for an entry had to be submitted for the record or in writing. In certain circumstances, evidence of inheritance or certification of legal personality also had to be filed.<sup>28</sup>

The maritime ship register had the following form:

1. Name of ship (*Name des Schiffes*);
2. Type of ship (*Gattung des Schiffes*);
3. Official survey results (*Ergebnisse der amtlichen Vermessung*);
4. Time and place of construction (*Zeit und Ort der Erbauung*);
5. Home port (*Heimathshafen*);
6. Correspondent shipowner (*Korrespondentrheder*);
7. Date of ship registration (*Tag der Eintragung des Schiffes*);
8. Ownership interest (*Eigentumsverhältnisse*):
  - 1) Sequence number (*Laufende Nr.*),
  - 2) Name and further particulars of the shipowner (*Name und nähere Bezeichnung der Rheder*),
  - 3) Part of ship (*Schiffsparten*),
  - 4) Basis of acquisition (*Erwerbsgrund*),
9. Ownership changes (*Veränderungen in den Eigentumsverhältnissen*)
  - 1) Sequence number (*Laufende Nr.*),
  - 2) To column (*zu Spalte*),

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<sup>26</sup> P. Siméon, *Handbuch zur Einführung...*, p. 218.

<sup>27</sup> A. Nußbaum, op. cit., pp. 169–171.

<sup>28</sup> Gesetz vom 17. Mai 1898 über die Angelegenheiten der freiwilligen Gerichtsbarkeit, Reichsgesetzblatt, year 1898, pp. 189–229, Paragraphs 100, 101, 107 and Grundbuchordnung vom 24. März 1897, Reichsgesetzblatt, year 1897, pp. 139–157, Paragraphs 13, 19, 29.

- 3) Name and further particulars of the shipowner (*Name und nähere Bezeichnung der Rheder*),
- 4) Part of ship (*Schiffsparten*),
- 5) Basis of acquisition (*Erwerbsgrund*),
10. Changes in recorded conditions excluding ownership changes (*Veränderungen in den eingetragenen Thatsachen mit Ausschluß der Eigenschaftsveränderungen*);
11. Liquidation of a ship (*Löschung des Schiffes*);
12. Pledges (*Pfandrechte*):
  - 1) Sequence number (*Laufende Nr.*),
  - 2) Amount (*Betrag*),
  - 3) Entries (*Eintragungen*),
  - 4) Changes (*Veränderungen*),
  - 5) Deletions (*Löschungen*).

763		Anlage I.
Nr. 125.		
Spalte 1.	Name des Schiffes. Germania. Deutschland.	Unterzeichnungs- signal. J G B C.
Spalte 2.	Gattung des Schiffes. Eisernes Schraubendampfschiff, als Schooner getauft.	
Spalte 3.	Ergebnisse der amtlichen Vermessung.  Die nach §. 25 Nr. 1 der Schiffsvermessungsordnung aufgenommenen Hauptmaße sind laut Ver- triebs des Kaiserlichen Schiffsvermessungsamts vom 10. Januar 1900: Länge = 84,39 m; Breite = 10,53 m; Tiefe = 7,29 m; größte Länge des Maststevens = 12,29 m. Die Vermessung ist auf Grund der Schiffsvermessungsordnung vom 1. März 1895 (Reichs-Gesetzbl. 1895 S. 161) nach dem vollständigen Verfahren erfolgt und es beträgt:	
	Kubikmeter.	Registertons.
	a) der Bruttoverdrängung des Schiffes .....	5 376,3      1 262,53
	b) der Nettoverdrängung des Schiffes .....	3 335,3      1 178,49
	Zu h) in Worten: dreitausend dreihundert acht und dreißig, fünf Achtel Kubikmeter, gleich eintausend einhundert acht und siebenzig, neun und vierzig Hundertstel Registertons.	
Spalte 4.	Zeit und Ort der Erbauung. 1899 auf der Werft der Aktiengesellschaft Vulcan in Bremen bei Stettin.	
Spalte 5.	Heimathshafen. Stettin. Schweinemünde.	
Spalte 6.	Korrespondentverleger. Friedrich Scholz, Kaufmann, Stettin. Ernst Becker, Kaufmann, Schweinemünde.	
Spalte 7.	Tag der Eintragung des Schiffes. 20. Januar 1900.      2 S S R 125. 1.	

Figure 43. Model for page 1 of the maritime ship register

Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, p. 763.

764			
Spalte 8. Eigenthumsverhältnisse.			
Laufende Nr.	Name und nähere Bezeichnung der Rheder.	Schiffsparten.	Erwerbsgrund.
a.	b.	c.	d.
1.	Friedrich Scholz, Kaufmann, Stettin, deutscher Reichsangehöriger.	3/4 1/2	hat das Schiff für seine Rechnung erbauen lassen.  haben die Parten von dem Kaufmann Friedrich Scholz in Stettin durch notariellen Vertrag vom 10. Januar 1900 gekauft.
2.	Wilhelm Müller, Schiffskapitain, Jasenitz, deutscher Reichsangehöriger.	1/8	
3.	Krüger & Marten, Kommanditgesellschaft, Stettin. Die persönlich haftenden Gesellschafter sind: Alfred Krüger, Kommerzienrath, Stettin, deutscher Reichsangehöriger; Albert Marten, Konsul, Stettin, deutscher Reichsangehöriger.	1/8	
	Zischer                      Neumann		

Figure 44. Model for page 2 of the maritime ship register

Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, p. 764.

765				
Spalte 9. Veränderungen in den Eigenthumsverhältnissen.				
Laufende Nr.	Zu Spalte	Name und nähere Bezeichnung der Rheder.	Schiffsparten.	Erwerbsgrund.
a.	b.	c.	d.	e.
1.	81.	Ernst Becker, Kaufmann, Zwinemünde, deutscher Reichsangehöriger.	1/4	hat die Part von dem Kaufmann Friedrich Scholz in Stettin durch notariellen Vertrag vom 20. März 1900 gekauft. — 2 S S R 125. 4. 25. März 1900. Zischer                      Neumann

Figure 45. Model for page 3 of the maritime ship register

Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, p. 765.



766				
Spalte 10. Veränderungen in den eingetragenen Thatsachen mit Ausschluß der Eigenthumsveränderungen.				Spalte 11.
Laufende Nr.	Zu Spalte	Veränderungen.		Lösung des Schiffes.
a.	b.	c.		
1.	1.	Der Name des Schiffes ist in „Deutschland“ geändert. — 2 S S R 125. 20. März 1900.		
		Fischer	Neumann	

Figure 46. Model for page 4 of the maritime ship register

Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, p. 766.

767				
Spalte 12. Pfandrechte.				
Laufende Nr.	Betrag M.	Eintragungen.	Veränderungen.	Lösungen.
a.	b.	c.	d.	e.
1.	9 000 — 4 000 5 000	Neuntausend Mark Darlehen mit fünf vom Hundert jährlich seit dem 1. Januar 1900 verzinslich und sechs Monate nach Kündigung rückzahlbar für den Gattwirth Wilhelm Peters in Stettin eingetragen auf dem ganzen Schiffe. — 2 S S R 125. 26. Januar 1900.	Zu Nr. 1. Fünftausend Mark mit dem Vorrang vor dem Reste nebst den Zinsen seit dem 1. October 1901 abgetreten an den Schmied Heinrich Stark in Hannover. — 2 S S R 125. 12. 24. October 1901.	Zu Nr. 1. Viertausend Mark Restforderung des Wilhelm Peters gelöst. — 2 S S R 125. 20. 1. October 1902.
		Fischer Neumann	Fischer Neumann	Fischer Neumann

Figure 47. Model for page 5 of the maritime ship register

Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, p. 767.

However, the inland ship register had the following entries:

1. Name, number or other distinctive signs of the vessel, class and material (*Name, Nummer oder sonstige Merkzeichen des Schiffes, Gattung und Material*);

2. Deadweight and, in the case of steam or other self-propelled vessels, engine power (*Tragfähigkeit und bei Dampfschiffen oder sonstigen Schiffen mit eigener Treibkraft die Stärke des Motors*);
3. Time and place of construction (*Zeit und Ort der Erbauung*);
4. Home port (*Heimathsort*);
5. Date of ship registration (*Tag der Eintragung des Schiffes*);
6. Ownership interest (*Eigentumsverhältnisse*):
  - 1) Sequence number (*Laufende Nr.*),
  - 2) Name and further particulars of the owner (*Name und nähere Bezeichnung der Eigentümer*),
  - 3) Co-owner's share (*Antheile der Miteigentümer*),
  - 4) Basis of acquisition (*Erwerbsgrund*),
7. Ownership changes (*Veränderungen in den Eigentumsverhältnissen*):
  - 1) Sequence number (*Laufende Nr.*),
  - 2) To column (*zu Spalte...*),
  - 3) Name and further particulars of the owner (*Name und nähere Bezeichnung der Eigentümer*),
  - 4) Co-owner's share (*Antheile der Miteigentümer*),
  - 5) Basis of acquisition (*Erwerbsgrund*),
8. Changes in recorded facts excluding ownership changes (*Veränderungen in den eingetragenen Thatsachen mit Ausschluß der Eigentumsveränderungen*);
9. Liquidation of ship (*Löschung des Schiffes*);
10. Pledges (*Pfandrechte*):
  - 1) Sequence number (*Laufende Nr.*),
  - 2) Amount (*Betrag*),
  - 3) Entry (*Eintragungen*),
  - 4) Changes (*Veränderungen*),
  - 5) Deletions (*Löschungen*).<sup>29</sup>

An alphabetical list of owners of vessels registered in a particular judicial district was also maintained for the Vessel Register, containing information on the owner's name, state and residence, vessel registry number and any comments.

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<sup>29</sup> P. Siméon, *Handbuch zur Einführung...*, p. 216.



Chapter 7. Maritime and inland ship registers

Spalte 6. Eigentumsverhältnisse.			
Kaufende Nummer.	Name und nähere Bezeichnung der Eigentümer.	Anteile der Mitigenthümer.	Erwerbsgrund.
a	b	c	d
1	<i>Stoffhausgasse 15 Hilffeldern Marx in Posen</i>		<i>Jah 1861 Befehl von Kaiser 1866 für eigene Kaufung bei dem Schiffbauamt der Kaiser in Mittelost beim Kaiser. Eingetragen am 9. März 1867 Johann Hilffeldern</i>

Figure 49. Page 2 of the inland ship register form

State Archive in Poznań, 53/2062/0 Rejestr sądowy przedsiębiorstw, reference number 3364, Binnenschiffsregister V-VII, 1905–1918.

Spalte 7. Veränderungen in den Eigentumsverhältnissen.				
Kaufende Nummer.	Zu Spalte	Name und nähere Bezeichnung der Eigentümer.	Anteile der Mitigenthümer.	Erwerbsgrund.
a	b	c	d	e

Figure 50. Page 3 of the inland ship register form

State Archive in Poznań, 53/2062/0 Rejestr sądowy przedsiębiorstw, reference number 3364, Binnenschiffsregister V-VII, 1905–1918.

Spalte 8. Veränderungen in den eingetragenen Schiffen mit Anseh auf der Eigentumsveränderungen.			Spalte 9. Lösung des Schiffes.
Kaufende Nummer.	Zu Spalte	Veränderungen.	Lösung des Schiffes.
a	b	c	d
			<i>Der Eigentümer ist nach Hilffeldern anlage der Registrierung ist geschlossen 19 B 4 R 250 6 5 November 1918 Johann Hilffeldern</i>

Figure 51. Page 4 of the inland ship register form

State Archive in Poznań, 53/2062/0 Rejestr sądowy przedsiębiorstw, reference number 3364, Binnenschiffsregister V-VII, 1905–1918.

Chapter 7. Maritime and inland ship registers

Spalte 10. Pfandrechte.				
Kaufende Nummer.	Betrag. Mark.	Eintragungen.	Veränderungen.	Löschungen.

Figure 52. Page 5 of the inland ship register form

State Archive in Poznań, 53/2062/0 Rejestr sądowy przedsiębiorstw, reference number 3364, Binnenschiffsregister V-VII, 1905-1918.

Des Eigenthümers			Schiffsregister Nr.	Bemerkungen.
Nr. und Vorname	Stand	Wohnort		
1.	2.	3.	4.	5.
<i>Fischer, Eliza</i>	<i>Wittberggraben</i>	<i>Altenberg</i>	<i>5.</i>	
<i>Friedrich, Wilhelm</i>	"	"	<i>37.</i>	<i>aus Brandenburg abgemeldet v. 12. 11. 1907</i>

Figure 53. Alphabetical list of owners for the inland ship register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Brandenburg, reference number Rep. 5E AG Brbg 148, Namenverzeichnis zum Binnenschiffsregister (1 Hälfte 19. Jh./2 Hälfte 20. Jh.), no dates.

## CHAPTER 8

### *Other registers*

Among the court registers, there were three more registers with their own special purpose. These were the register of designs (*Musterregister*), the register of matrimonial property rights and the stock exchange register. Although these registers were not as important and common as those described in the other chapters, they were an integral part of the system. It is, therefore, appropriate to devote a separate place to them in the following monograph.

#### *8.1 Register of designs*

The register of designs (*Musterregister*) was introduced by the Imperial Act of 11 January 1876 (*Geschmacksmustergesetz*).<sup>1</sup> According to the provisions of the Act, it was intended for the registration of designs that were to be used as artistic designs (*Geschmacksmuster*). As mentioned in Chapter 4, utility models, on the other hand, were registered at the patent office.<sup>2</sup> To ensure copyright protection, specimens (matrices) of the registered design were filed in the register.<sup>3</sup> The term of protection of a design (determined by the applicant) was 1 to 3 years, extendable to 15 years.<sup>4</sup>

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<sup>1</sup> Gesetz vom 11. Januar 1876, betreffend das Urheberrecht an Muster und Modellen, Reichsgesetzblatt, year 1876, pp. 11–14.

<sup>2</sup> P. Siméon, *Handbuch zur Einführung in das Bürgerliche Gesetzbuch und seine Nebengesetze. Zweiter Band*, Berlin 1904, pp. 212–213.

<sup>3</sup> A. Nußbaum, *Die freiwillige Gerichtsbarkeit im Reiche und in Preußen*, Berlin 1900, pp. 160–161.

<sup>4</sup> P. Siméon, *Lehrbuch der freiwilligen und streitigen Gerichtsbarkeit*, Berlin 1931, p. 199.

## 8.1 Register of designs

The court of first instance was responsible for keeping the register. Applications for registration were submitted either on the record or in writing. However, no register of incoming applications was kept, which was due to the fact that registration only benefited the concerned party.<sup>5</sup> As a general rule, proceedings before the court of registration were governed by the provisions on the commercial register, unless otherwise provided for in the relevant provisions.<sup>6</sup> Only new and original designs and models were allowed to be registered in the register. Interestingly, however, the court had no power to examine the correctness of the applications filed.<sup>7</sup> Therefore, it could not reject the application either, as its filing was solely at the discretion of the parties. Consequently, the design register was governed by an “application procedure”, which was the opposite of the “preliminary examination procedure” prevalent in German patent and trademark law.<sup>8</sup> The court also did not have the power to impose administrative penalties in the event that the designer failed to register the design.<sup>9</sup> Registrations and renewals were published monthly in a summary notice in the *Deutscher Reichsanzeiger*.<sup>10</sup>

In 1904 it was allowed to enter in the register designs for exhibitions designated by the Reich Chancellor in the *Reichsgesetzblatt*. This change was intended to safeguard the rights of the exhibitor and his successors in title against unauthorised use of a prepared exhibition, as well as against problems with enforcing later rights to reproduce, publish and use prepared designs. The second condition for registration was that it should be made within six months from the opening of the exhibition.<sup>11</sup>

The manner of keeping the register of designs was regulated in detail by a Proclamation of the Office of the Reich Chancellor of 29 February 1876. It specified such issues as a register form consisting of the following headings:

1. Sequence number (*Laufende Nummer*);
2. Surname or business name of the applicant (*Name oder Firma des Anmeldenden*);

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<sup>5</sup> *Idem*, *Handbuch zur Einführung...*, p. 213.

<sup>6</sup> A. Nußbaum, *op. cit.*, pp. 160–161.

<sup>7</sup> A. Brand, *Die Registersachen in der gerichtlichen Praxis*, Berlin 1906, p. 414.

<sup>8</sup> A. Nußbaum, *op. cit.*, pp. 160–161.

<sup>9</sup> A. Brand, *op. cit.*, p. 414.

<sup>10</sup> P. Siméon, *Handbuch zur Einführung...*, p. 213.

<sup>11</sup> A. Brand, *op. cit.*, p. 415. This was done under Reichsgesetz vom 18. März 1904, betreffend den Schutz von Erfindungen, Mustern und Warenzeichen auf Ausstellungen, Reichsgesetzblatt, year 1904, p. 141.

3. Date and time of application (*Tag und Stunde der Anmeldung*);
4. Designation of the applied design (*Bezeichnung des angemeldeten Musters oder Modells*);
5. Specification whether the design is intended for flat products or for plastic products (*Angabe ob das Muster für Flächenerzeugnisse oder für plastische Erzeugnisse bestimmt ist*);
6. Protection period (*Schutzfrist*);
7. Extension of the protection period (*Verlängerung der Schutzfrist*);
8. File relating to the register (*Akten über das Musterregister*);
9. Remarks (*Bemerkungen*).<sup>12</sup>

Each design, model or package entered in the register was awarded its own special number at the time of registration. However, all requests for a census were dated and time-stamped.<sup>13</sup>

Fortlaufende Nr.	Name bezw. Firma des Anmeldenden.	Tag und Stunde der Anmeldung.	Bezeichnung des angemeldeten Musters oder Modells.
1.	2.	3.	4.
11.	Firma: <i>Oehmigle &amp; Riemerschneider zu Neu-Ruppin.</i>	<i>8<sup>ten</sup> August 1887, Pommes-Haus III Hof 115<sup>ter</sup> Wirtshaus.</i>	<i>für ein eingetragenes Patent mit 14 Mustern für ein gebackenes Brot Neben-Produkte: 7556, 7560, 7565, 7569, 6991, 6992, 6993, 8487, 8502, 8509, 8526, 8542, 8544, 8552.</i>

Figure 54. Page 1 of the design register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Neuruppin, reference number Rep. 5E AG Neureppin 866, Musterregister, Nummer 1-31, 1881-1934.

<sup>12</sup> Bestimmungen vom 29. Februar 1876 über die Führung des Musterregister, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1876, p. 197.

<sup>13</sup> A. Brand, op. cit., pp. 415-416.



## 8.1 Register of designs

Angabe ob das Muster für Färbereizeichnisse oder für plastische Erzeugnisse bestimmt ist.	Schutzfrist.	Verlängerung des Schutzfrist.	Acten über das Muster-Register.	Bemerkungen.
5.	6.	7.	8.	9.
<i>Styrum- Färbereizeichn.</i>	<i>Dorn-Josef</i>		<i>Grund F. Klatt 52.</i>	<i>eingetragen gültige Schutz- frist vom 8ten August 1887 in wäulischen Folge. Herrzog Gnossel/Spornberg, 100 abgeliefert am 27/9 96 - d. II. 13 fol. 10 -</i>

Figure 55. Page 2 of the design register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Neuruppin, reference number Rep. 5E AG Neureppin 866, Musterregister, Nummer 1–31, 1881–1934.

An alphabetical index of surnames and companies registered in the register was also kept for the register of designs.<sup>14</sup> However, the manner in which this list was kept was not regulated in detail. As a result, there may have been local variations. The following illustrations show the appearance of the index for surnames and the combined one:

<i>Nomant- Hörzger</i>		<i>Nomant- Hörzger</i>	
	N <sup>o</sup>		N <sup>o</sup>
<i>S. Höft, Gustav, Spornberg.</i>	1	<i>f. Finapins fnd.</i>	179
<i>Höft, Gustav, Spornberg.</i>	3.	<i>G. Ferkel fndf.</i>	180
<i>Schmidt, W.H., Spornberg</i>	29	<i>A. Finapins 204, 205, 206 217, 219, 220. Finapins fndf. 100 apr 100</i>	204 205 206 217 219 220 221

Figure 56. Alphabetical index of surnames registered in the design register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Spornberg, reference number Rep. 5E AG Spornberg 285, Musterregister, 1889–1933.

<sup>14</sup> Bestimmungen vom 29. Februar 1876 über die Führung des Musterregister, Paragraph 2.

1.	Namen od. Firmen des Anmalers.	Nr. d. Matri- keln.	in d. Matrikeln eingetragen am	in d. Matrikeln eingetragen am	Kommungen.
		3.	4.	5.	6.
	11. Goldhelf Müller	21. 4. 1891.	26. 8. 1891.		

**Figure 57.** Alphabetical index of surnames and business names registered in the design register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Spremberg, reference number Rep. 5E AG Spremberg 285, Musterregister, 1889–1933.

### 8.2 Register of matrimonial property rights

The maintenance of the register of matrimonial property rights (*Güterrechtsregister*) and the registration procedure were based on the provisions of the German Civil Code,<sup>15</sup> Prussian Law on Voluntary Judicial Proceedings,<sup>16</sup> notice of the Reich Chancellor of 12 November 1898,<sup>17</sup> and the General Order of 6 November 1899.<sup>18</sup> These are the same legal acts that governed the keeping of the register of associations.

The purpose of the register was to record deviations from the normal property relations between spouses, which could be of significance to third parties and their annulment.<sup>19</sup> These relationships included:

<sup>15</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Reichsgesetzblatt, year 1896, pp. 195–603.

<sup>16</sup> Preussisches Gesetz vom 21. September 1899 über die freiwillige Gerichtsbarkeit, Gesetz-Sammlung für die Königlichen Preussischen Staaten, year 1899, Issue 31, pp. 249–284, Paragraphs 159–160.

<sup>17</sup> Bekanntmachung (des Reichskanzlers) vom 12. November 1898, betreffend die durch Beschluß des Bundesraths vom 3. November 1898 genehmigten Bestimmungen über das Vereinsregister und das Güterrechtsregister, Centralblatt für das Deutsche Reich, year 1898, pp. 438–440.

<sup>18</sup> Allgemeine Verfügung (des Justizministers) vom 6. November 1899 über die Führung des Vereinsregister und des Güterrechtsregister, Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege, year 1899, pp. 299–312.

<sup>19</sup> P. Siméon, *Lehrbuch des Bürgerlichen Rechtes. Zweite Hälfte Sachenrecht, Familienrecht, Erbrecht*, Berlin 1912, p. 881.

## 8.2 Register of matrimonial property rights

1. exclusion or modification of the legal rules of the matrimonial property regime by a marriage contract;
2. existence of the reserved property;
3. existence of separation of property;
4. limitation or exclusion of key powers;
5. opposition by the husband to the wife's independent exercise of a profitable business.<sup>20</sup>

The register thus made it possible for anyone entering into a legal transaction with one of the spouses to obtain information in order to determine his or her actual legal status.<sup>21</sup> To ensure that this objective was achieved, the register was public, and entries were published in newspapers. However, it followed from the substantive law provisions, in particular, that the legal relationships requiring registration were only effective vis-à-vis third parties if the registration was made in due time (e.g. when concluding a contract with a third party) or if the third party, which had to be proven to him, knew of the existence of the legal relationship. The spouses, therefore, had an urgent interest in bringing about the registration because by not doing so, they would harm themselves. Consequently, this was a similar approach by the legislature as in commercial law cases. In view of the philosophy adopted, there was also no judicial compulsion to register.<sup>22</sup>

The registration had to be made at the court of first instance in the district where the spouse was domiciled. In the case of a change of residence, the registration also had to be made in the court of the new residence. This requirement was dictated by the legislature's belief that citizens could not be expected to research a man's first domicile on a case-by-case basis and determine the court with jurisdiction over the domicile in order to consult the register or obtain a copy of it.<sup>23</sup>

Registration (including removal) took place on a systematic basis only at the request of the parties. Only an official cancellation procedure took place from the office if an entry in the register was inadmissible due to the absence of an essential element. For the registration to be valid, each entry had to be communicated to both spouses. As mentioned, entries in the register had to

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<sup>20</sup> Bürgerliches Gesetzbuch vom 18. August 1896, Paragraphs 1357, 1371, 1405, 1431, 1435, 1470, 1545, 1548, 1549.

<sup>21</sup> A. Nußbaum, op. cit., pp. 163–165.

<sup>22</sup> P. Siméon, *Lehrbuch des Bürgerlichen Rechtes...*, p. 882.

<sup>23</sup> *Ibidem*.

be published. Unlike other registers with this obligation, in the case of the register of matrimonial property rights, *Amtsblatt* was sufficient for this purpose.<sup>24</sup> According to the decision of the Court of Appeal (*Kammergericht*) of 2 April 1900, entry in the register could only take place after the marriage. Before the marriage, it was possible to apply for it, but the act itself required the presentation of a marriage certificate.<sup>25</sup>

Older Prussian law required an entry in the register for certain property transactions between spouses, in particular for the introduction or exclusion of a general community of property. In order to provide information on the nature of matrimonial property law, a so-called register of rights (*Vorrechtsregister*) was created for Prussia. In this register, certain liens and rights that were abolished or restricted by the new judicial provisions could be entered. Entry in the register caused them to be maintained for a period of 20 years. However, this register was closed relatively quickly. In Prussia, a section of the commercial register was also kept on the basis of the General German Commercial Code for the entry of information on the introduction or abolition of common property. However, regulations introduced at the end of the 19th century abolished this section of the commercial register. It is also worth noting that institutions similar to the register of matrimonial property rights were kept earlier than in Prussia under national law in Bremen and Oldenburg.<sup>26</sup>

The register form was divided into three columns:

1. Entry number (*Nummer der Eintragung*);
2. Legal relationship (*Rechtsverhältnis*);
3. Remarks (*Bemerkungen*).<sup>27</sup>

For the register of matrimonial property rights, an alphabetical index of persons entered in the register was also kept, including the register number, identification of the spouses and their place of residence:<sup>28</sup>

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<sup>24</sup> P. Siméon, *Lehrbuch der freiwilligen und streitigen Gerichtsbarkeit*, Berlin 1931, p. 200.

<sup>25</sup> P. Siméon, *Handbuch zur Einführung...*, p. 215.

<sup>26</sup> A. Nußbaum, op. cit., pp. 163–165.

<sup>27</sup> P. Siméon, *Handbuch zur Einführung...*, p. 215.

<sup>28</sup> Allgemeine Verfügung (des Justizministers) vom 6. November 1899 über die Führung des Vereinsregister und des Güterrechtsregister..., Paragraph 16.

### 8.3 Stock exchange register

Bezeichnung der Ehegatten: <i>zu Meißner Hermann Reetz und Sozin Lina familia Hobus zu Koerlin a/Peris.</i>		
Nummer der Eintragung.	Rechtsverhältniß.	Bemerkungen.
1	<i>King Notary vom 13<sup>ten</sup> Februar 1901 ist für die zu pflichtbare offe Güterverteilung voran best. unter Aufsicht des oben erwähnten Notarsamt der Verwaltung.</i> <i>13<sup>ten</sup> Februar 1901.</i> <i>Matz</i>	

**Figure 58.** Page from the register of matrimonial property rights

State Archive in Koszalin, 26/143/0 Sąd Obwodowy w Karlinie, reference number 1714, Güterrechtsregister Nr. 1-200, 1900-1932.

Aktz.	Bezeichnung der Ehegatten:	Wohnort.
8	<i>Albrecht Reil Tischmacher = Olga geb. Schütz</i>	Forst
85	<i>Koppelt, Wilhelm Weber = Emma geb. Weber</i>	"

**Figure 59.** Alphabetical index to the register of matrimonial property rights

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Forst, reference number Rep. 5E AG Forst 1360, Alphabetisches Namensverzeichnis der Güterrechtssachen, no dates.

### 8.3 Stock exchange register

The Stock Exchange Act of 22 June 1896<sup>29</sup> covered such issues as the trade-in futures or forward contracts on the stock exchange and, in particular, restrictions on the rights of citizens who do not participate in the stock exchange and cannot therefore enter into futures or forwards.<sup>30</sup> A particularly pressing problem was to ensure effectiveness and facilitate lodging objections against futures or forwards.

<sup>29</sup> Börsengesetz vom 22. Juni 1896, Reichsgesetzblatt, year 1896, pp. 157-176.

<sup>30</sup> A. Nußbaum, op. cit., pp. 161-163.

To this end, the Stock exchange register (*Börsenregister*) was established.<sup>31</sup> The district courts were responsible for its maintenance.

According to § 66 of the said Act, an exchange futures transaction constituting a legally enforceable instrument could only be entered into if both parties were listed in the Stock exchange register at the time of the transaction. The law also defined exchange futures transactions as purchase transactions and other purchase transactions for a fixed period with a fixed execution date if they are concluded on the basis of exchange conditions specified by the exchange and the futures prices are officially quoted on the relevant exchange.<sup>32</sup>

Requests for a person to be entered in the register were made orally on record or in writing subject to court or notarial form. Entries were published in the *Deutscher Reichsanzeiger* and other journals intended to publish entries in the commercial register.<sup>33</sup> Moreover, in January each year, the registry courts were obliged to send notices of entries made to the District Court of Berlin I, which were then published in summary form in the *Deutscher Reichsanzeiger*. The deletion of an entry always took place at the end of the year. This took place either at the request or ex officio if a person had not paid the registration fee by 30 November of a year.<sup>34</sup> Importantly, the cancellation was not effective against third parties acting in good faith until one month after the date of publication of a new general register in which the person or company was no longer listed. An exception to this rule was when, at the time of the transaction, one party – which could be proven – was not the owner of the shares and the other party – which had to be proven – knew of the deletion.<sup>35</sup>

It is interesting to note that under § 58(2) of the Stock Exchange Act, wives could be listed on the stock exchange register and thus be entitled to enter into futures transactions on the stock exchange. This was one of the few cases in which the law in force in Germany during the period in question still restricted the wife's ability to dispose of her assets. This was because the law allowed an exception for "trading wives". However, the New Commercial Code, unlike the Stock Exchange Act, did not know the concept of a merchant's wife. In this case, therefore, the provisions of the General German Commercial Code applied, according to which such women were exempted from the requirement of their husband's consent

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<sup>31</sup> P. Siméon, *Handbuch zur Einführung...*, p. 213.

<sup>32</sup> Börsengesetz vom 22. Juni 1896, Paragraph 66.

<sup>33</sup> Ibidem, Paragraphs 59 and 62.

<sup>34</sup> P. Siméon, *Handbuch zur Einführung...*, p. 214.

<sup>35</sup> A. Nußbaum, op. cit., pp. 161-163.

### 8.3 Stock exchange register

if they could engage in commercial transactions with his consent. In the case of a person who had limited legal capacity, only the legal representative could apply for registration. However, submission of an application by a guardian or court-appointed officer required the approval of the guardianship judge. An entry that did not meet the requirements set out in § 58 of the Stock Exchange Act was deleted ex officio if the defect was not remedied or corrected within a reasonable time.<sup>36</sup>

The stock exchange register was divided into two independent parts. The one concerned commodities (*Börsenregister für Waren/A*), while the other – securities (*Börsenregister für Wertpapiere/B*).<sup>37</sup> The structure of both parts was regulated by a notice of 9 October 1896.<sup>38</sup> The register for commodities contained the following headings:

1. Sequence number (*Laufende Nummer*);
2. First name, surname, status, business name (*Name, Vorname, Stand, Firma*);
3. Place of establishment or residence (*Ort der Niederlassung oder Wohnsitz*);
4. Industry (*Geschäftszweig*);
5. Remarks (*Bemerkungen*).

<b>Börsenregister für Waaren.</b>				
1.	2.	3.	4.	5.
Laufende №	Name, Vorname, Stand, Firma.	Ort der Niederlassung oder Wohnsitz.	Geschäftszweig.	Bemerkungen.

**Figure 60.** Commodity exchange record form

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Guben, reference number Rep. 5E AG Guben 171, Börsenregister für Waren/A, no dates.

<sup>36</sup> Ibidem, pp. 161–163.

<sup>37</sup> P. Siméon, *Handbuch zur Einführung...*, p. 214.

<sup>38</sup> Bekanntmachung des Reichskanzlers vom 9. Oktober 1896 und Allgemeine Verfügung des Justizministers vom 17. Oktober 1896, betreffend die Führung der Börsenregister und die Aufstellung der Gesamttliche, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1896, pp. 327–332.

Chapter 8. Other registers

The register for securities contained essentially the same headings, with the omission of the heading 4.

Börsen-Register für Wertpapiere.			
1.	2.	3.	4.
Laufende N.	Name, Vorname, Stand, Firma.	Ort der Niederlassung oder Wohnsitz.	Bemerkungen.

**Figure 61.** Form of securities exchange register

The Brandenburg Main State Archive, 2.4.1.5E Amtsgericht Guben, reference number Rep. 5E AG Guben 172, Börsenregister für Wertpapiere/B, no dates.



PART III

*System  
of public registers*



## CHAPTER 9

# *Links between public registers in the Kingdom of Prussia<sup>1</sup>*

One of the basic purposes of this monograph is to shed light on Prussian public registers as a system. It is necessary to begin these considerations with the definition of what the system is. Information sciences define the system as follows: “System S is a given set of elements and their constant behaviour and a set of linkages between elements, as well as between elements and the environment”<sup>2</sup> or “a set of component elements called objects, related to each other and performing particular functions in a certain way”.<sup>3</sup> In the humanistic trend, a system can be defined as “any internally coordinated set of elements with a specific function and showing a specific structure”<sup>4</sup> or “a deliberately defined set of elements and a set of interconnections between them, which together define the properties of the whole”.<sup>5</sup>

The system can be distinguished by both individual elements thereof and relations that occur between them. Particular elements of the system of public registers in the kingdom of Prussia were, of course, individual registers,

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<sup>1</sup> This paragraph was a base of paper: Hadrian Ciechanowski, *Public Registers in the Kingdom of Prussia at the Turn of the 19th and 20th Centuries in a Systemic Perspective*, *Journal on European History of Law*, Vol 12, No. 2, 2021, pp. 114–121.

<sup>2</sup> R. A. Orchard, *O pewnym ujęciu ogólnej teorii systemów*, In: *Ogólna teoria systemów. Tendencje rozwojowe*, ed. G. J. Klir, Warszawa 1976, p. 217.

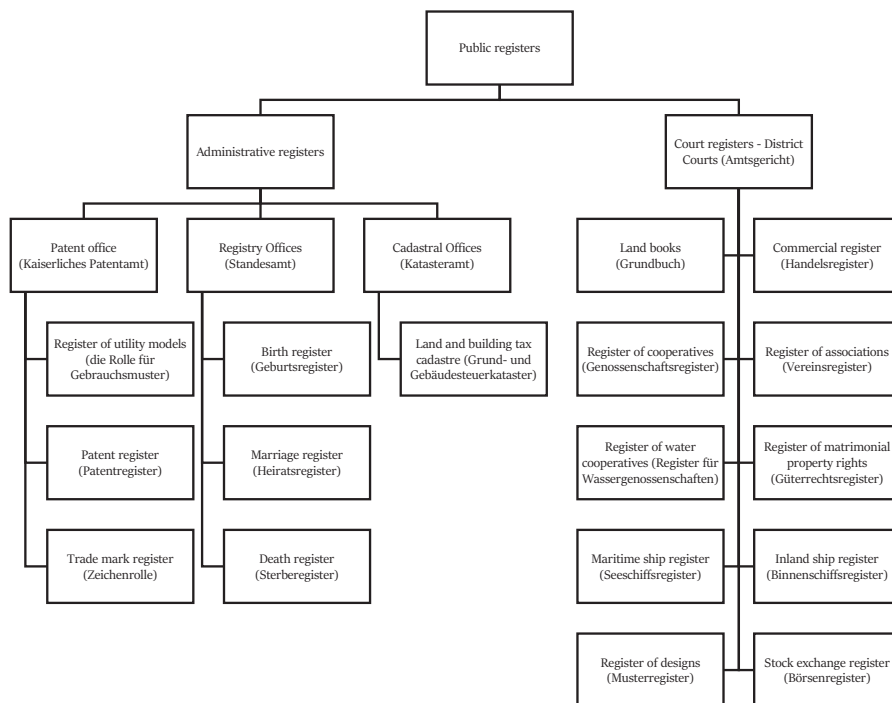
<sup>3</sup> K. Gałkowski, E. Szlachcic, *Podstawowe pojęcia i definicje teorii systemów*, In: *Teoria systemów*, ed. T. Stanicki, Wrocław 1975, p. 4.

<sup>4</sup> W. Pogorzelski, *Teoria systemów i metody optymalizacji*, Warszawa 1996, p. 51.

<sup>5</sup> B. Ryszewski, *Problemy i metody badawcze archiwistyki*, Toruń 1985, p. 76.

characterized in the first two parts of the book. The aim of the following chapter will be to discuss the couplings between the elements of the system, which were manifested mainly through the circulation of information between the registers.

At this point, however, it should be noted that the Prussian registers were not coordinated to the same extent as the public registers functioning today. Despite the relative uniformity in the keeping of individual registers, each local branch was an independent register. A similar situation took place in Poland as late as in the 21st century, if only with regard to marital registers, because it was only with the widespread use of information technology that it became possible to integrate individual registers into a closely functioning system. Nevertheless, taking a model approach, it is possible to see many links between the individual public registers in the Kingdom of Prussia, and – more broadly – in the German Reich. The following diagram presents the division and list of public registers kept in the Kingdom of Prussia at the turn of the 19th and 20th centuries.



**Diagram 1.** Public registers in the Kingdom of Prussia

Source: Diagram prepared by the author.

### 9.1. Information flow between registers

Prussian registers include several types of linkage, among which three basic types can be indicated:

1. Information flow between registers;
2. Mutual complementation of registers from the point of view of the goal they were to pursue;
3. A common legal basis determining the manner of their conduct.

The first type of linkage between registers was the flow of information between them. This cycle was usually carried out in two different ways. In the first variant, the person interested in submitting an entry in one register would provide a certificate issued by the court maintaining another register. In the other variant, it would lie with one court to keep both registers, i.e., the register in which the entry was made and the register from which certain information was obtained. In such a case, the court was merely obliged to read the entry made in the second register, but there was no need to provide extracts or other documents.

The second type of linkage was based on the assumption that the registers kept either by the same authority or by other institutions served a similar purpose. In the case of Prussian registers, this purpose consisted in the protection of property rights and creditors' rights.

As for the third type of linkage, the provisions on keeping one of the registers served as a model and basis for registration activity also in the case of other registers. In such an event, altered functioning of the "mother" register also entailed a shift in the derivative registers.

### 9.1. Information flow between registers

The first type of linkage occurred on two planes. First comes the internal plane consisting in the flow of information between individual parts of the same register. Such linkage can be indicated, inter alia, in registers of marital status and land registers. In the case of the marital status registers, the flow of information was most intensified in the case of birth and marriage registers. The condition for contracting marriage was the provision of relevant documents, which included announcement protocols and copies of birth certificates of future spouses. The most obvious expression is the preserved attachment files, which constituted collections of documents submitted to the registers as the basis for making entries in them.

In the case of land books (*Grundbuch*), in accordance with the applicable regulations, when the keeping of land books for a particular property was transferred to another court, the land book files for the transferred property were

obligatorily sent to that court.<sup>6</sup> Such a situation could take place, for example, if there was a change in district boundaries or a possible merger of real estate belonging to one person in a single land register.

Similarly, when the port or place of registration was transferred outside the registry district, the ship registry (*Schiffsregister*) files were sent to the court in whose district the ship was to be re-registered. The only exceptions were the ship certificate or letter and certified copies of the register contents, which were not sent between the courts. Importantly, if the transfer was related to a change of the shipowner, before sending the files, the previous court would still be obliged to register these facts.<sup>7</sup>

Information was to be sent also in the case of the commercial register (*Handelsregister*). It was necessary to register an established branch of an enterprise in the commercial register competent for the place of founding. This registration had to be independent of that of the main company. However, when the entry concerning the company's headquarters was changed, it was also necessary to record this fact in the register for the branch. An important practice in this regard was that entry in the register storing information about the branch could only take place after registration with the court competent for the main enterprise. The necessary condition was to provide proof that the registration had actually taken place. It was therefore necessary to transfer information between the commercial registers kept by individual courts.<sup>8</sup>

Circulation of information between individual branches of a relevant register was necessary for the proper and reliable keeping of individual registers. Without sending information between branches of a relevant register kept by different courts or offices, it would not be possible to achieve the goals set for them; at the same time, it would lead to information chaos and bring forward a major field for abuse, e.g., by allowing marriage in several Registry Offices through falsifying information about one's origin. This problem was actually noticed by the German authorities, for instance in the case of the commercial register, where it was

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<sup>6</sup> Allgemeine Verfügung vom 20. November 1899 zur Ausführung der Grundbuchordnung, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1899, pp. 349–379, Paragraph 18.

<sup>7</sup> Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1899, pp. 753–778, Paragraph 11.

<sup>8</sup> Handelsgesetzbuch vom 10. Mai 1897. Erstes Buch. Handelsstand, Reichsgesetzblatt, year 1897, pp. 219–240, Paragraph 13.

necessary to provide proof of registration in the register of the main enterprise prior to entry in the register of the branch.

The second type of information flow occurred between individual registers in this case treated as a whole. With such an approach, we can distinguish a series of linkages between registers. However, these linkages cannot be demonstrated for all identified registers.

As regards marital status registers (*Geburts-, Heirats-, Sterbe-Register*), communication occurred mainly with the register of marital property rights (*Güterrechtsregister*) and land registers (*Grundbücher*). In the case of the former, an entry was possible only after marriage. This resulted in the necessity to provide the official with proof of marriage.<sup>9</sup>

On the other hand, in the case of land registers, there are multiple extracts from the registers of marital status that could be found in land files (*Grundakten*). These documents were placed in the register most often in inheritance proceedings. They constituted evidence of inheritance of property by individuals and were often attached to court files submitted on the occasion of decisions made during hearings. However, copies of marital status records were often attached to the files as independent evidence in registration proceedings. All three types of deeds can be found in the land register files, but it seems that copies of death certificates were particularly often submitted during the registration procedure.<sup>10</sup>

Land registers also linked the registers of marital property rights, the commercial register and the register of cooperatives. In the case of the former, communication took place when the spouses wanted to include information on the separation of property in the land register, because in such case it was necessary to provide a certificate of entry of this right in the register of property

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<sup>9</sup> P. Siméon, *Handbuch zur Einführung in das Bürgerliche Gesetzbuch und seine Nebengesetze. Zweiter Band*, Berlin 1904, p. 215.

<sup>10</sup> For example: State Archive in Wrocław, 82/260/0 Sąd Obwodowy we Wrocławiu, reference numbers: 4.4.1.12/13, 4.4.2.48/3, 4.4.2.58/17, 4.4.2.59/7, 4.4.2.63/4, 4.4.2.68/5, 4.4.2.82/23; State Archive in Olsztyn, 42/275/0 Sąd Obwodowy w Białej Piskiej, reference numbers: 295, 1412, 1796; State Archive in Olsztyn, 42/292/0 Sąd Obwodowy w Ostródzie, reference numbers: 8165, 8568, 8762, 12848; State Archive in Toruń, 69/1332/0 Archiwum Ksiąg Wieczystych Sądu w Wąbrzeźnie, reference numbers: 673, 1258, 1982, 1978, 1979; State Archive in Toruń, 69/1813/0 Księgi i akta gruntowe sądów w Toruniu, reference numbers: 420, 3402, 3829; State Archive in Toruń, 69/1727/0 Księgi i akta gruntowe sądów w Nowym Mieście Lubawskim, reference numbers: 100, 1891; State Archive in Toruń, 69/600/0 Archiwum Ksiąg Wieczystych Sądu w Brodnicy, reference numbers: 820, 1316, 2035, 2038.

rights, which comprised excluded evidence for the land register office. This was the case with adding new rights and removing them from the register.<sup>11</sup>

In the case of the commercial register and the register of cooperatives, it was necessary to provide the relevant information when registering property. Under German law, legal persons could also own real estate. In the case of these entities, the company name and seat constituted were recorded in the land books. The existence of the company and its seat was confirmed by the aforementioned registers and the extracts and certificates issued from them.<sup>12</sup> Submission of an appropriate certificate issued by the court was necessary to make the entry.<sup>13</sup> At the same time, in the case of companies, it was necessary to provide a court certificate confirming who could represent the company.<sup>14</sup>

Concurrently, communication progressed in the opposite direction. Pursuant to the provisions in force in Germany, a company was established by way of an agreement between the shareholders, which could be of an oral nature. Written form, i.e., a court or notary agreement, was required only in the case of transferring land real estate belonging to one of the partners. However, writing down such a contract could be replaced by an entry in the land book.<sup>15</sup> Thanks to this, it was also possible to register information on the capital in the form of land owned by a relevant enterprise in the commercial register.

Nonetheless, it is necessary to emphasize that not all of these documents were attached to the land register files. The German law allowed the possibility of withdrawing from their collection if the Land Registry Office (*Grundbuchamt*) was at the same time the court responsible for keeping the commercial register (and thus also other registers). In such a situation, it was sufficient to refer to the register itself instead of referring to the collected documents.<sup>16</sup>

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<sup>11</sup> V. Pauwels, *Grundbuchordnung für das Deutsche Reich vom 24. März 1897 erläutert durch die Rechtsprechung*, Leipzig 1907, pp. 54–55

<sup>12</sup> Allgemeine Verfügung vom 20. November 1899 zur Ausführung der Grundbuchordnung, Paragraph 4.2.

<sup>13</sup> W. Turnau, R. Förster, *Das Liegenschaftsrecht nach den Deutsche Reichsgesetzen und den Preußischen Ausführungsbestimmungen*, Padeborn 1903, pp. 218–219.

<sup>14</sup> Grundbuchordnung vom 24. März 1897, Reichsgesetzblatt, year 1897, pp. 139–157, Paragraph 33.

<sup>15</sup> A. Korn, *Das Neue Handelsgesetzbuch für das Deutsche Reich im Originaltext mit den preisgekrönten gemeinverständlichen Erläuterungen*, Berlin–Liepzig, 1901, p. 66.

<sup>16</sup> Bekanntmachung vom 20. Mai 1898 des Textes der Grundbuchordnung in der vom 1. Januar 1900 an geltenden Fassung, Reichsgesetzblatt, year 1898, pp. 754–770, Paragraph 35.



However, among all Prussian registers, the deepest connection was visible between the land registers and the cadastre. First of all, changes to the ownership data in the land books always required an update in the cadastre. Similarly, a change of real estate data in the cadastre required an update of land registers. In the case of a change of ownership, it even depended on an earlier change in the land register.<sup>17</sup> Therefore, the law required full compliance of the information contained in both registers and the possibly immediate transmission of information between the offices keeping the registers.<sup>18</sup>

This was associated with a number of consequences. For example, due to the requirement for land books to comply with the land tax books, it was ordered in 1870 that the area measures included in the land tax books were to be transferred to a metric measure, in accordance with the provisions on measures and weights for the North German Union. Therefore, an update of land books was required as well. For this purpose, the courts received copies of the new land tax cadastral registers converted into metric measures. Interestingly, prior to the full adoption of metric measures in land books, old and new measures would be used in cadastral extracts intended for courts.<sup>19</sup>

Moreover, with each new regulation of the land register, the owner was obliged to indicate the real estate subject to entry according to the cadastral designation and to submit an excerpt from the land tax, including all real estate and indicating the border neighbour. In case of doubts as to the exact property border, in addition to local witnesses or local authorities, it was possible to refer to cadastral maps.<sup>20</sup>

On the other hand, the land register office was obliged to immediately notify the competent cadastral inspectors of changes in ownership registered in the land register. Cadastral controllers would introduce changes to the update protocols (*Fortschreibung Protokolle*). If, however, the article number of the land or building tax was changed, the land registry office found out about it from the cadastral office and corrected entries in the land book. The list on the basis of which this administrative act was done was then stored in the updating files (*Fortschreibungsunterlagen*) of the cadastral office.<sup>21</sup>

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<sup>17</sup> H. Henning, *Kataster und Grundbuch*, Berlin 1961, p. 90.

<sup>18</sup> D. H. Richter, *Das materielle und formelle Deutsche Grundbuchrecht in seiner Beziehung zum Liegenschaftskatasterdienst mit besonderer Berücksichtigung der bayerischen und rheinpfälzischen Verhältnisse*, Berlin-München 1950, pp. 10–11.

<sup>19</sup> P. Auschrat, *Probleme der Archivierung von Katasterunterlagen in Brandenburg*, Potsdam 1997, p. 22.

<sup>20</sup> *Ibidem*, pp. 21–22.

<sup>21</sup> *Ibidem*, p. 23.

Similar procedures were carried out when reconciling land and tax records for buildings. The lists of the tax on buildings, revised after the amount of that tax was redetermined, were sent in the form of a copy to the district court. Likewise, the courts were to be informed about updated land registry maps and measurement records.<sup>22</sup>

Procedurally, the cadastral office had to take into account information which it received from the court without undue delay in order to obtain the possibly necessary information from the court and provide it with all the updates. If the cadastral office has been notified by the court that properties previously entered in the land register on different sheets have been combined on one sheet, it should, if these properties were also shown on different articles of the matrix, combine them on one article.<sup>23</sup>

Since the ruling of the Reichs Court in 1910, the land cadastre had formed a formal and material community with the land register. By referring to the real estate cadastre as a geometric and legal reference system, the civil law on land registers and the public law geodesic and cadastral law were related to one another. Inventory data and owners' data were subject to double registration in the real estate cadastre and the land book. For reasons of clarity and legal certainty, it was necessary to ensure that the redundant data was consistent. Their compliance comprised a relationship between the original cadastral and the original land and mortgage accounting duties and competencies.<sup>24</sup>

In order to minimize the administrative burden and costs, the cadastre and land registers were to be kept thoroughly. Possible errors could result from the fact that the cadastre was defective or that the reconciliation of the land register with the cadastre was incorrect. Both the cadastral office and the land registry were obliged, upon detecting such an error, to take the necessary actions *ex officio* to amend it.<sup>25</sup>

The rectification procedure was also undertaken if the cadastral office sent the court a copy of the notification of the change of ownership entered in the tax books. The excerpt itself was placed in the land register files for informational purposes. On the other hand, the judge examined whether the notification from

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<sup>22</sup> Ibidem.

<sup>23</sup> H. Schütte, H. Schütte, *Kataster und Grundbuch in Preußen, ihre Verbindung und gegenseitige Berichtigung*, Ziegenhain 1936, pp. 31–32.

<sup>24</sup> H. Kremer, *Die Verzahnung von Liegenschaftskataster, Vermögenszuordnung und Grundbuch*, Vermesung Brandenburg, Issue 1, 1999, p. 22.

<sup>25</sup> P. Auschrat, *op. cit.*, p. 24.

the cadastral office provided grounds for pursuing actions aimed at correcting the land register by entering a new owner. If, on the other hand, the cadastral office sent a copy of the amendment notice to the district court to merge several parent parcels from one and the same owner into one item or to split one item into several items, the land register entry number had to be revised accordingly.<sup>26</sup>

If, as a result of an error regarding the ownership right, someone was entered in the tax books and, accordingly, in the land book as the owner of the entire cadastral plot, who did not in fact hold the ownership title, it was not possible to correct the tax books without revising the land book. The registration judge, having learned about the error, was obliged to act for its removal, taking into account the impact on public faith and the correctness of the land book. The land register office was informed about the corrections made in the land register by means of lists of ownership changes.<sup>27</sup>

In case of doubts as to the correctness of the plot boundary, e.g., when the plots or their parts were changed by verbal agreements without their rewriting by the court or notary public, the entry of the border change to the cadastre had to be made on the basis of an entry of the change of ownership in the land register. As changes in the ownership law always involve the transfer of ownership and entry in the land register, it could be assumed that the information contained therein was correct.<sup>28</sup>

The update also concerned land books and the so-called “*Wertkataster*”. Valuation sheets were prepared for each plot of land that constituted an economic unit. In order to keep the valuation forms up-to-date, they were updated following the updating of the cadastral registers. After submitting to the cadastral office, the lists of ownership changes provided by the land register office, it was checked whether the purchase prices contained in the lists were up-to-date. The entry of purchase prices in the original lists could only take place after the lists of ownership changes were updated.<sup>29</sup>

The connection between the land registers and the cadastre was therefore very profound, as both registers complemented one another to form a land and building register, which would give the maximum guarantee of credibility.

There were also numerous flows of information between the commercial and cooperative registers and other court registers and registers kept by the Patent

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<sup>26</sup> H. Schütte, H. Schütte, op. cit., p. 34.

<sup>27</sup> P. Auschrat, op. cit., p. 25.

<sup>28</sup> Ibidem, pp. 25-26.

<sup>29</sup> Ibidem, p. 50.

Office. This communication consisted primarily in the provision of information on whether a legal person could acquire specific rights resulting from an entry in a specific register. Companies could own ships<sup>30</sup> as well as designs and patents.<sup>31</sup> In particular, the implementing rules indicated that any changes concerning a person or a representative entered in the register of utility models or a patent had to be reported in a form that could prove this fact, and therefore primarily in the form of an extract from the relevant register.<sup>32</sup> On the other hand, the provisions on the court register of designs specified that the application was filed with the court competent for the principal place of business or the authority competent for the place of residence.<sup>33</sup>

The provisions on the trademark register (*Zeichenrolle*) of 1894 required that the applicant for the entry attach the name of the company in which the mark was to be used to the application. It was therefore necessary to register the activity in advance.<sup>34</sup> It was even more explicitly expressed in the Act of 1874, which specified that only an entrepreneur whose company was entered in the commercial register could apply to the competent court to enter in the commercial register of its headquarters signs which were to be affixed to their goods or packaging.<sup>35</sup>

A similar situation occurred in the case of the stock exchange register (*Börsenregister*), in which companies could also be entered.<sup>36</sup> However, these

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<sup>30</sup> Bekanntmachung des Textes des Gesetzes, betreffend die privatrechtlichen Verhältnisse der Binnenschifffahrt, in der vom 1. Januar 1900 an geltende Fassung, vom 20. Mai 1898, Reichsgesetzblatt, year 1898, pp. 868–903, Paragraph 123 and Gesetz vom 22. Juni 1899, betreffend das Flaggenrecht der Kauffahrteischiffe, Reichsgesetzblatt, year 1899, pp. 319–325, Paragraph 2.

<sup>31</sup> Patentgesetz vom 25. Mai 1877, Reichsgesetzblatt, year 1877, pp. 501–510, Paragraph 19; Patentgesetz vom 7. April 1891, Reichsgesetzblatt, year 1891, pp. 79–90, Paragraph 19; Gesetz vom 1. Juni 1891, betreffend den Schutz von Gebrauchsmustern, Reichsgesetzblatt, year 1891, pp. 290–293, Paragraph 3; Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes vom 7. April 1891 und des Gesetzes, betreffend den Schutz von Gebrauchsmustern, vom 1. Juni 1891, Reichsgesetzblatt, year 1891, pp. 349–355, Paragraphs 12 and 22.

<sup>32</sup> Verordnung vom 11. Juli 1891 zur Ausführung des Patentgesetzes..., Paragraph 22.

<sup>33</sup> Gesetz vom 11. Januar 1876, betreffend das Urheberrecht an Mustern und Modellen, Reichsgesetzblatt, year 1876, pp. 11–14, Paragraph 9.

<sup>34</sup> Gesetz zum Schutz der Waarenbezeichnungen vom 12. Mai 1894, Reichsgesetzblatt, year 1894, pp. 441–448, Paragraph 2.

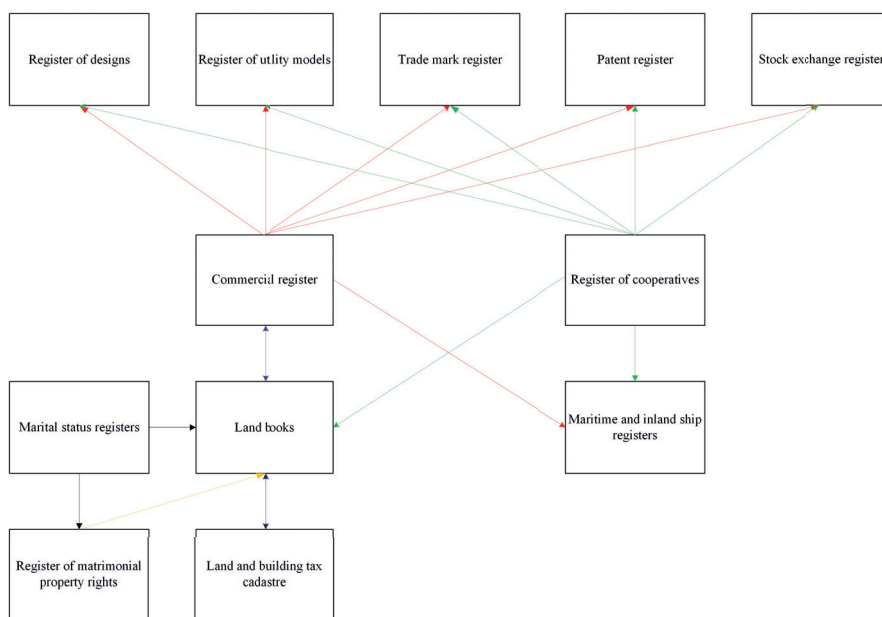
<sup>35</sup> Gesetz über Markenschutz vom 30. November 1874, Reichsgesetzblatt, year 1874, pp. 143–146, Paragraph 1.

<sup>36</sup> Börsengesetz vom 22. Juni 1896, Reichsgesetzblatt, year 1896, pp. 157–176, Paragraph 55.

### 9.1. Information flow between registers

provisions contained one more rule, which resulted in the flow of information from the commercial register. The admission to trading shares of a company transformed into a joint-stock company or a limited partnership with shares could not take place earlier than one year after it had been entered in the commercial register.<sup>37</sup> It was therefore necessary to provide relevant information confirming this fact.

The circulation of information between the Prussian and, more broadly, German registers was based mainly on the need to provide information confirming the fact of acquiring certain rights resulting from entry in another register. The central place here was played by commercial and cooperative registers, the entry of which allowed the enterprise to acquire a company and legal personality. However, it was impossible to provide information about the company without its prior establishment. That said, the peculiarity of the German registers lies in the fact that, in many cases, the evidence provided was not attached to the registration files. This is due to two facts. First of all, German



**Diagram 2.** Information flow between public registers

Source: Diagram prepared by the author.

<sup>37</sup> Ibidem, Paragraph 39.

law allowed for an oral application to be entered in the protocol. Secondly, if the same authority was responsible for keeping individual registers, it was not obliged to collect documents, which could be replaced by a reference to a specific register. In such a situation, the flow of information took place by reading the appropriate entry.

The flow of information between public registers is presented in the diagram 2.

### *9.2 Complementary from the perspective of the objective*

The second type of communication between registers was based on the fact that they served similar purposes and thus complemented one another. Although there was no circulation of information in this instance or no common legal basis was present, they constituted a system allowing for the acquisition and protection of relevant rights.

This is particularly true for the register of designs (*Musterregister*), the register of utility models (*die Rolle für Gebrauchsmuster*) and the register of patents (*Patentregister*). The purpose of these registers was to guarantee the owner of submitted images or models protection of his rights to use the reported goods and derive certain benefits from them. Both design registries complemented one another in that the courts registered designs of an artistic nature, while the patent office registered designs of a technical nature.<sup>38</sup> The utility model register, on the other hand, supplemented the patent register in such a way that it allowed for obtaining similar rights, as it also related to utility items, but without the need to apply a relatively complicated procedure for obtaining a patent. At the same time, the protection resulting from the registration of a patent, and not a design, lasted much longer, i.e., 15<sup>39</sup> and 3<sup>40</sup> years, accordingly. It should be emphasized that a slightly different purpose was pursued by the trademark register, which was to guarantee the protection of only the signs used by a given merchant or producer<sup>41</sup> and not the technology used by him. Thus, from the point of view of the objective, it served a models' similar purpose but differed in terms of the subject of registration.

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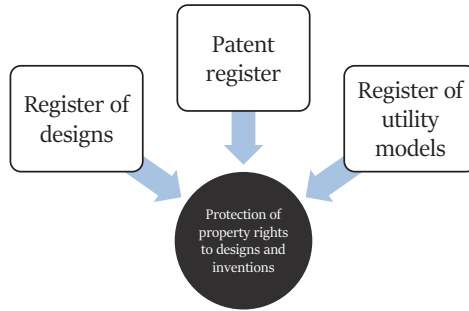
<sup>38</sup> P. Siméon, *Handbuch zur Einführung...*, pp. 212–213.

<sup>39</sup> Patentgesetz vom 7. April 1891, Paragraph 7.

<sup>40</sup> Gesetz vom 1. Juni 1891, betreffend den Schutz von Gebrauchsmustern, Paragraph 8.

<sup>41</sup> Gesetz zum Schutz der Waarenbezeichnungen vom 12. Mai 1894, pp. 441–448.

### 9.3 Common legal basis



**Diagram 3.** Public registers for the purpose of protecting property

Source: Diagram prepared by the author.

Land books and ship registers also served a partially common purpose. Both, apart from disclosing information about the ownership of a given item, also served to disclose and secure the rights of creditors by entering a mortgage on real estate or a ship, treated in this case on an equal footing with land or building.<sup>42</sup> Importantly, some of the same provisions were applied to these registers. In particular, these rules concerned applications and calls relating to registry of a lien.<sup>43</sup> It also links to the third means of communication between the elements of the system of public registers in Prussia.

### *9.3 Common legal basis*

The third type of linkage between registers was based on common legal norms. This applied in particular to the commercial register and other registers kept by courts. These registers, especially when it comes to how they are kept, the duties of the registration authority and the proceedings by the registration authority, were based on the provisions on the commercial register (*Handelsregister*). Hence, this community concerned cooperative registers (*Genossenschaftsregister*),<sup>44</sup>

<sup>42</sup> T Stawecki, *Rejestry publiczne. Funkcje instytucji*, Warszawa 2005, p. 195.

<sup>43</sup> *Instrukcje dla sekretariatów sądów powiatowych, okręgowych i apelacyjnych*, ed. T. Zajączkowski, Poznań 1921, p. 10.

<sup>44</sup> Bekanntmachung vom 11. Juli 1889, betreffend die Führung des Genossenschaftsregisters und die Anmeldungen zu demselben, Reichsgesetzblatt, year 1889, pp. 150–167, Paragraphs 3, 5, 10; Gesetz vom 1. April 1879, betreffend die Bildung von Wassergenossenschaften. Gesetz-Sammlung für die Königlichen Preußischen Staaten, year 1879, pp. 297–318, Paragraph 13.

ship registers (*Schiffsregister*),<sup>45</sup> stock exchange registers (*Börsenregister*),<sup>46</sup> and the register of designs (*Musterregister*).<sup>47</sup> This community was generally emphasized in the literature and included in the relevant legal provisions.<sup>48</sup> These registers were also compulsorily maintained by the courts responsible for keeping the commercial register in accordance with the applicable legislation. The rules linking the individual registers to the commercial register are discussed in the chapters on the individual registers. They will therefore not be discussed in detail again here.

To conclude the considerations raised in this chapter, it must be stressed that there is a certain systemic approach to Prussian/German public registers. That said, it remains a rather primitive system based mainly on the transfer of information between registers by persons interested in the entry. Nonetheless, one cannot easily hide the fact that it exhibited the nature of a modern system of public registers, as obtaining rights resulting from entry in one register required the acquisition of rights resulting from entry in another register. At the same time, it ensured much greater credibility of the data collected in the registers, as the information entered was subject to multiple verifications.

The mere fact of the circulation of information between registers, which is a condition for obtaining certain rights, is enough to prove the thesis put forward at the beginning of this chapter. Still, it must be stressed that lower-level systems must also be indicated as part of the system of public registers in Prussia. These subsystems were established as a result of interactions resulting from the implementation of a similar goal and being based on common legal provisions. These two types of interactions, occurring only between a part of the registers constituting systemic elements, allow to indicate two areas with

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<sup>45</sup> Allgemeine Verfügung (des Justizministers) vom 11. Dezember 1899 über die Führung des Schiffsregisters..., Paragraph 3.

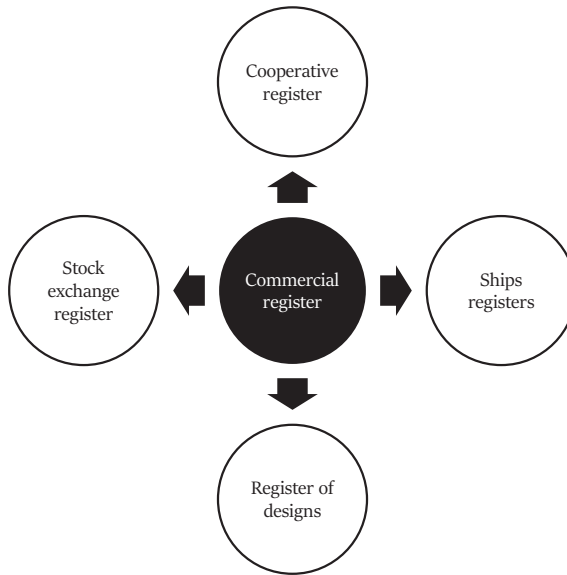
<sup>46</sup> Bekanntmachung des Reichskanzlers vom 9. Oktober 1896 und Allgemeine Verfügung des Justizministers vom 17. Oktober 1896, betreffend die Führung der Börsenregister und die Aufstellung der Gesamttliche, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1896, pp. 327–332, Paragraph 2.

<sup>47</sup> Bestimmungen vom 29. Februar 1876 über die Führung des Musterregister, Justiz-Ministerial-Blatt für die Preußische Gesetzgebung und Rechtspflege, year 1876, pp. 194–198, Paragraph 1.

<sup>48</sup> A. Nußbaum, *Die freiwillige Gerichtsbarkeit im Reiche und in Preußen*, Berlin 1900, pp. 160–161; Börsengesetz vom 22. Juni 1896, Paragraphs 56 and 62; P. Siméon, *Handbuch zur Einführung...*, p. 216; M. Wrzolek-Romańczuk, *Rejestr spółdzielni. Zagadnienia materialno-prawne i procesowe*, Warszawa 1986, p. 13.



### 9.3 Common legal basis



**Diagram 4.** Public registers based on a commercial register

Source: Diagram prepared by the author.

independent properties, but ones which also interfered with the other registers. The presence of subsystems is therefore another argument supporting the thesis, which constitutes the core idea behind the monograph.

It should also be stressed that the “heart” of the system was the commercial register, which, by registering facts about the company, granted it the rights of a legal entity and allowed it to acquire rights resulting from other registers. At the same time, this register, and in fact the regulations concerning it, constituted the grounds for proceedings in registration cases also as regards other registers. Therefore, it was, to the greatest extent, the axis of linkage between the elements of the researched system.

## CHAPTER 10

# *Impact of Prussian registers on the development of public registers in Poland*

The subject of the last chapter will be the question of the influence of public registers kept in the Kingdom of Prussia on the development of this branch of administration in Poland in the 20th and 21st centuries. This issue will be presented on the example of selected public registers, which are the most representative examples and at the same time some of the most important registers kept today. These will be the marital status registers, land registers, cadastre and commercial register.

### *10.1 Marital status registers<sup>1</sup>*

After regaining independence, the Polish authorities in the interwar period had no choice but to rely on 19th-century solutions, which had to serve as the basis for the functioning of various social institutions in the reborn country.<sup>2</sup> For this reason, the law from 1875 was in force for a very long time – until 1939 (only in the territory of the former Prussian Partition). Not only the rebirth of Poland in 1918 but also taking over the administration of Former Prussian Province in the years 1919–1920 did not repeal its validity. It is important to note that in

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<sup>1</sup> The subsection (completed and expanded) is based on the article: H. Ciechanowski, *The Polish Civil Status Registration System – the Longue Durée of the Prussian Idea*, Journal on European History of Law, Vol. 11, Issue 2, 2020, pp. 76–80.

<sup>2</sup> J. Osuchowski, *Z dziejów prawa małżeńskiego i prawa o aktach stanu cywilnego w Polsce*, In: *Pro bono Reipublice. Księga jubileuszowa Profesora Michała Pietrzaka*, ed. P. Borecki, A. Czohara, T. J. Zieliński, Warszawa 2009, p. 93.

Germany, they were changed in 1920<sup>3</sup> and, even after modification in the Republic of Weimar, cancelled by Hitler in 1937.<sup>4</sup>

However, it was not the only marital status registration system in independent Poland. Originally, there were as many as five systems of registration in force in Poland: Prussian, Austrian, Kingdom of Poland, Russian and Hungarian.<sup>5</sup> In 1922 the Austrian system was extended to the Polish territories of Spisz and Orawa, replacing the Hungarian provisions in force there since 1894.<sup>6</sup>

However, returning to the Prussian system, it should be emphasised that during about 64 years of its lasting time, only limited corrections were made. Minor corrections in the structure of marital status districts were made in the years 1888, 1889, 1900, and 1905. Those changes consisted mainly of merging small districts into larger ones or integrating them into towns.<sup>7</sup> A completely new division into marital status districts was established on the 1st of January 1936. Until the end of 1935, there were about 160 districts, and since 1936 – only 73.<sup>8</sup> New districts were two or three times bigger than the old ones.

The language of marital status registers was changed from German to Polish in the years 1920–1921.<sup>9</sup> The switch of language was stretched over time because from 1919 onwards, under the agreement with the Weimar Republic, German officials still ran the Polish administration.<sup>10</sup> What is essential, the Polish registers were a continuation of those conducted earlier, and they were made on the same

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<sup>3</sup> Gesetz über den Personenstand vom 11. Juni 1920, Reichsgesetzblatt, year 1920, pp. 1209–1210.

<sup>4</sup> Personenstandsgesetz vom 3. November 1937, Reichsgesetzblatt, year 1937, pp. 1146–1152.

<sup>5</sup> A. Koziół, *Uwag kilka o pracach nad dekretem o aktach stanu cywilnego z 1945 roku*, In: *Miscellanea Iuridica. T. 7. Między I a III Rzeczpospolitą. Kształtowanie europejskiej kultury prawnej. Prace ofiarowane prof. zw. dr. hab. Adamowi Lityńskiemu w 40-lecie pracy naukowej*, ed. M. Mikołajczyk, A. Drogoń, Tychy 2006, p. 146.

<sup>6</sup> J. Osuchowski, op. cit., p. 95.

<sup>7</sup> H. Ciechanowski, *Problemy zespołowości materiałów archiwalnych wytworzonych przez urzędy stanu cywilnego w latach 1874–1945*, In: *Zasada przynależności zespołowej w praktyce archiwów państwowych*, ed. E. Rosowska, Warszawa 2017, pp. 145–166.

<sup>8</sup> Obwieszczenie Wojewody Pomorskiego z dnia 13 grudnia 1935 r. w sprawie utworzenia nowych obwodów Urzędów Stanu Cywilnego na obszarze województwa pomorskiego, *Pomorski Dziennik Wojewódzki*, year 1935, No. 26/306, pp. 413–426.

<sup>9</sup> H. Ciechanowski, *Rejestry publiczne w archiwach. Problemy gromadzenia i opracowania zespołów wytworzonych przez Urzędy Stanu Cywilnego*, In: *Archiwa Polski i Europy, wspólne dziedzictwo różne doświadczenia*, ed. A. Kulecka, Warszawa 2017, pp. 291–300.

<sup>10</sup> R. Pacanowska, *Przeobrażenia administracji powiatowej w Wielkopolsce w okresie II Rzeczypospolitej*, In: *Rocznik Samorządowy*, vol. 3, 2014, p. 74.

forms. For example, if the Prussian register was completed under number 4, the new Polish register started with number 5.<sup>11</sup>

Before the outbreak of World War 2, however, the Polish authorities saw the need to unify the marriage law and, consequently, the law on marital status registration. The codification commission set up in 1919 considered this work urgent and of great social importance. This was due, among other things, to the fact that the legal situation on the territory of the former Russian partition was contrary to the state constitution. To a lesser extent, the problem was also present in the territory of the former Austrian partition. The first draft was presented as early as in 1920 and contained a number of solutions opposing the exclusively denominational form of registration.<sup>12</sup> It is worth noting that although the state initiative was directed towards secular marriages, there were voices (also in parliament) inspired by the Catholic Church calling for the abolition of civil weddings in the former Prussian partition and for securing the right of the church in this matter with state measures.<sup>13</sup> The state, however, strongly advocated the introduction of secular regulations modelled on Prussian ones. Among others, Cyril Ratajski, as Minister of the Interior, in 1925 had the intention to extend the Act of 1875 to the whole territory of the Polish state. However, this project was not given the go-ahead.<sup>14</sup> These efforts arose, among other things, from the fact that only the Prussian-occupied territories were able to carry out marital status registration in an efficient manner. In the remaining territories, there were considerable shortcomings and delays in this respect.<sup>15</sup>

The Codification Commission completed its work in 1929 with the adoption of a draft of personal marriage law and in 1931 of a draft law on marital status records.<sup>16</sup> Though the projects were not passed by the parliament because of Catholic Church resistance against the marriage law, it is essential to mention that the law about marital status registers was mainly based on the Prussian law of the 6th of February 1875.<sup>17</sup>

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<sup>11</sup> Examples: State Archive in Toruń: 69/1211/0 Urząd Stanu Cywilnego Przedzamicze Rogóźno, reference number 1040, [Główny Rejestr małżeństw USC Przedzamicze Rogóźno za 1921 r.], 1921–1921; 69/1167/0 Urząd Stanu Cywilnego Lipinki, reference numbers: 3112, 3113.

<sup>12</sup> J. Osuchowski, op. cit., pp. 95–96.

<sup>13</sup> Ibidem, op. cit., p. 97.

<sup>14</sup> A. Koziół, op. cit., p. 145.

<sup>15</sup> S. Szulc, *Dokładność rejestracji urodzeń i zgonów*, In: *Zagadnienia demograficzne polski. Statystyka Polski*, Seria C, vol. 41, Warszawa 1936, pp. 133–135.

<sup>16</sup> J. Osuchowski, op. cit., p. 99.

<sup>17</sup> E. Tarkowska, *Prawne kształtowanie się instytucji rejestracji stanu cywilnego na ziemiach polskich do roku 1986*, Białystok, 2015, p. 99.

### 10.1 Marital status registers

Eventually, the Prussian laws were repealed by the German occupation administration in October 1939 by Adolf Hitler's decree from the 8th of October 1939 about the organisation and administration of east acquisitions. Although it was not pronounced, some proof is the third decree from the 4th of November 1939 about the realisation of marital status law. Its legal basis was a German marital status law of the 3rd of November 1937 (in force since the 1<sup>st</sup> July 1938) and the decree from the 8th of October.<sup>18</sup> Archives also confirm the functioning of the new law. The established Registry Office in Rychnowo, held in the State Archive in Toruń, contains registers from the years 1941–1943. One of them is a so-called *Familienbuch* – a new form of the marriage register binding in Germany since 1938.<sup>19</sup>

A different system of marital registration functioned in the General Government. The Poles and other nations were registered only by a church administration. For German citizens, the Governor-General of the General Government of Poland, Hans Frank, established the secular state registration on the 1st of May 1940. The marital status district was a district (*German Landkreis*) or a separated city/town.<sup>20</sup>

However, the Polish legislation on marital status registration did not become invalid entirely in 1940, given that the Polish and occupation-related laws were in force in parallel during this period.<sup>21</sup>

During the takeover of the occupied territory by the communist authorities in 1944–1945, German law and administration were almost wholly repealed. In eastern and central Poland, there was initially a restoration to the religious registration of marital status. State registration was only kept in the Pomeranian Voivodeship and at the Recovered Territories.<sup>22</sup> Since the 21st of April 1945, it had been introduced also in the territories annexed by the Third Reich in 1939: in the city of Włocławek and the communities of Włocławek, Lipno, Rypin, and Nieszawa.<sup>23</sup>

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<sup>18</sup> H. Ciechanowski, *Problemy zespołowości materiałów...*, pp. 145–166.

<sup>19</sup> State Archive in Toruń, 69/1218/0 Urząd Stanu Cywilnego Rychnowo, reference number 3008, [Boczný rejestr małżeństw USC Rychnowo z lat 1942–1943], 1942–1943.

<sup>20</sup> Rozporządzenie o pawie stanu cywilnego Niemców w Generalnym Gubernatorstwie z dnia 16 marca 1940 r., *Dziennik rozporządzeń Generalnego Gubernatora dla okupowanych polskich obszarów*, Part I, No 21, Kraków 1940, pp. 104–106.

<sup>21</sup> J. Litwin, *Prawo o katach stanu cywilnego. Komentarz*, Warszawa 1961, p. 5.

<sup>22</sup> H. Ciechanowski, *Problemy zespołowości materiałów...*, pp. 145–166.

<sup>23</sup> Okólnik w sprawie urzędów stanu cywilnego we Włocławku i powiatach włocławskim, lipnowskim, rypińskim i nieszawskim, *Pomorski Dziennik Wojewódzki*, year 1945, No. 5, p. 79.

To legitimise its power, the new Polish communist government referred to the models of the pre-war administration. Mostly the pre-war offices were functioning next to communist organs. One of the few exceptions was marital status registration. By the power of law, it had been entirely secular in the whole territory of Poland since the 1<sup>st</sup> of January 1946.<sup>24</sup> Surprisingly, the new Polish communist marital law was not taken from the Soviet Union, but it was almost a copy of Prussian law from 1875. The government also restored the structure of marital status districts from 1936. The most significant difference was that new forms of registers did not include information about faith, so the core of the system organisation did not change. There was also a certain similarity between the 1945 decree and the 1931 project mentioned above.<sup>25</sup>

The law introduced after World War II was completely devoid of any religious elements, acquiring a secular character. At the same time, the only valid marriage with legal effects became a marriage contracted in a secular registry office run by local authorities. On the other hand, a divorce could be arranged through court proceedings.<sup>26</sup> Probably due to the declared total secularity of the state, the new law did not impose the conclusion of civil marriage before a religious marriage, as it was under Prussian law.<sup>27</sup> The ideological basis of the unification of civil law carried out during this period stemmed from the doctrine of the socialization of private law. According to this doctrine, the state in the field of family law should ensure adequate instruments of influence over the functioning of the family. In particular, this concerned the control of the most important family law events from the state's point of view, which included the conclusion and dissolution of marriage, interference in the exercise of parental authority, the establishment of guardianship, and the establishment and dissolution of adoption.<sup>28</sup>

The next marital status registration reform was carried out in 1955. Under the decree of the 8th of June 1955, copies of registers were not made any more and changed the marital status districts map. Since this year, the registry offices

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<sup>24</sup> Dekret z dnia 25 września 1945 r. Prawo o aktach stanu cywilnego, Dz. U. 1945 No. 48 Item 272.

<sup>25</sup> E. Tarkowska, op. cit., p. 139.

<sup>26</sup> A. Koziół, op. cit., pp. 149–150.

<sup>27</sup> P. Fiedorczyk, *Założenia ideologiczne prac nad unifikacją prawa rodzinnego w Polsce w latach 1945–1946*, In: *Miscellanea Iuridica. T. 7. Między I a III Rzeczpospolitą. Kształtowanie europejskiej kultury prawnej. Prace ofiarowane prof. zw. dr. hab. Adamowi Lityńskiemu w 40-lecie pracy naukowej*, ed. M. Mikołajczyk, A. Drogoń, Tychy 2006, p. 127.

<sup>28</sup> P. Fiedorczyk, *Prawne problemy początków rejestracji aktów stanu cywilnego w Polsce po II wojnie światowej*, *Przeszłość Demograficzna Polski*, Issue 39, 2017, p. 347.

have been located in gromadas (Polish *gromada*), settlements (Polish *osiedle*), city districts or towns and not, as before, in communes and towns.<sup>29</sup> The marital status districts map from 1955 lasted until 1975 when the administration reform in Polish People's Republic re-establish communes as the basic territorial division units. The next small corrections were made in 1986;<sup>30</sup> however, they did not change marital status registration basic principles. Therefore, even the 1986 Act benefited from the achievements of the pre-war 1931 draft.<sup>31</sup> What is important, the reforms of 1945, 1955, and 1986 did not change the basis of the organisation of the marital status registration system introduced by the Act of 1875. Practically unchanged was the body of collected information and the connection of registry offices with the lowest administrative units. Registration was also secular.

Also in the Third Republic, the principle of the secular character of marriage law and the law on marital status records was maintained. This results from the fact that all detailed issues (including divorce) have been regulated by civil law, not by canon law. Only in the concordat between the Holy See and the Republic of Poland a certain bow was made towards the religious factor by allowing concordat marriages.<sup>32</sup>

The most significant reform of marital status registration was made in 2014 in a new political system. Since the May 2014 registers have been fully digital and kept in a nationwide database; however, the registry offices, as in the past, are situated in communes and towns. The registry offices are users of the application called "Źródło", which grants them access to the database. The Act of 2014 also amended the scope of the information collected.<sup>33</sup>

The differences between registers from 1875, 1945 and 2014 are shown in the tables 3–5.

These three tables show that the information core of marital status registers has been nearly the same since the Prussian times. The communists deleted only information about the State and the religion of the citizens. That was the

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<sup>29</sup> Dekret z dnia 8 czerwca 1955 r. Prawo o aktach stanu cywilnego, Dz. U. 1955 No. 25 Item 151.

<sup>30</sup> Ustawa z dnia 29 września 1986 r. Prawo o aktach stanu cywilnego, Dz. U. 1986 No. 36 Item 180.

<sup>31</sup> E. Tarkowska, op. cit., pp. 166–168.

<sup>32</sup> Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską, podpisany w Warszawie dnia 28 lipca 1993 r., Dz. U. 1998 No. 51 Item 318, Article 10 and J. Osuchowski, op. cit., pp. 107–108.

<sup>33</sup> Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego, Dz. U. 2014 Item 1741.

**Table 3.** Information gathered in birth registers under the laws of 1875, 1945 and 2014

No	1875	1945	2014
1	Name and surname as well as condition or occupation of the person reporting the event	Name, surname, occupation, age, place of residence of the person reporting the event	Name and surname of the person reporting the event
2	Place, date and time of birth	Location, date and time of birth	Country, location, and date of birth
3	Sex of the child	Sex of the child,	Sex of the child
4	The name or names of the child	The name or names of the child	The name or names of the child
5	Names, surnames, religion, State or occupation and place of residence of parents	Names, surnames, occupation, place of birth, date of birth or age and place of residence of parents	Names, surnames, and surnames at birth, dates, and locations of birth of the child's parents

Source: Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes und die Eheschließung, Reichsgesetzblatt, year 1875, pp. 23–40, Dekret z dnia 25 września 1945 r. Prawo o aktach stanu cywilnego, Dz. U. 1945 No. 48 Item 272, Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego, Dz. U. 2014 Item 1741.

result of the secularisation of the country and the abolition of the nobility and land ownership. The most significant changes in the information core were introduced in 2014 as a result of a changing approach to citizens' freedom and privacy. However, the most important of them are steady.

As mentioned above, the basic principles introduced in 1874 are still valid in the Polish marital status registration system. These principles were articulated by Joseph Litwin, and they are:

1. Laicization (Secularization);
2. Objective truth;
3. Universality;
4. Territoriality;
5. Uniformity of the system of registration authorities;
6. Address registration;
7. Completeness (ex officio updating);
8. Self-sufficiency of the act;
9. Limited formal openness of books and records.<sup>34</sup>

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<sup>34</sup> J. Litwin, op. cit., p. 23.



### 10.1 Marital status registers

**Table 4.** Information gathered in marriages registers under the laws of 1875, 1945 and 2014

No	1875	1945	2014
1	Names, surnames, religion, age, condition or occupation, date and place of birth, place of residence of married couples	Names and surnames, age, occupation, date, and place of birth, place of residence of married couples	Names and surnames, family names, marital status date, and place of birth of married couples
2	Names, surnames, State and occupation, and the place of residence of their parents	Names, surnames, occupation, and the place of residence of their parents	Names, surnames, family names of their parents
3	Names, surnames, age, condition or occupation and place of residence of witnesses	Names and surnames, occupation and place of residence of witnesses	Names and surnames of witnesses
4	A statement of those entering into marriage	A statement of those entering into marriage	A statement of those entering into marriage
5	A decision by a marital registrar	Possible declaration by the wife to keep her family name next to her husband's name	place and date of marriage
6			Surnames of couples to be carried after marriage
7			The name children born of marriage will have

Source: Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes und die Eheschließung, Reichsgesetzblatt, year 1875, pp. 23–40, Dekret z dnia 25 września 1945 r. Prawo o aktach stanu cywilnego, Dz. U. 1945 No. 48 Item 272, Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego, Dz. U. 2014 Item 1741.

However, the Prussian concept was based on the French ideas. It was quite new and revolutionary in Polish territories where the religious form of marital status registration was continued and strongly defended until 1939<sup>35</sup> and partially even until 1945.

<sup>35</sup> K. Krasowski, *Prawo o aktach stanu cywilnego w II Rzeczypospolitej*, *Kwartalnik Prawa Prywatnego*, vol. 2, 1995, pp. 227–252.

**Table 5.** Information gathered in deaths registers under the laws of 1875, 1945 and 2014

Item	1875	1945	2014
1	Name and surname, State or occupation and place of residence of the applicant	Name and surname, occupation and place of residence of the applicant	Name and surname or organisation name of the applicant
2	Place, day and time of death	Location, day and time of death or finding the corps	Place, date and time of death
3	Name and surname, religion, age, condition or occupation, place of residence and place of birth of the deceased	Name, surname, marital status, citizenship (other than Polish), place of residence, date, and place of birth or possible age of the deceased	Name, surname, family name, marital status, date, and place of birth of the deceased
4	Name and surname of his spouse or a note stating that the deceased was unmarried	Name and surname of his spouse (if the spouse is alive also his or her occupation and place of residence)	If married name and surname of his spouse
5	Names, surnames, status or occupation and place of residence of the parents of the deceased	Names and surnames of the parents of the dead (if they are alive also their occupation and place of residence)	Names and surnames the parents of the deceased

Source: Gesetz vom 6. Februar 1875 über die Beurkundung des Personenstandes und die Eheschließung, Reichsgesetzblatt, year 1875, pp. 23–40, Dekret z dnia 25 września 1945 r. Prawo o aktach stanu cywilnego, Dz. U. 1945 No. 48 Item 272, Ustawa z dnia 28 listopada 2014 r. Prawo o aktach stanu cywilnego, Dz. U. 2014 Item 1741.

To summarise, the Polish marital status registration system is an example of the *longue durée* in administration functioning. The system core has not been changed since 1875, even though the political system still changes in Poland. Even the communist government from 1945 to 1990 did not use soviet patterns, but the model made by the Prussian administration did not make any changes in its basics. The system of marital status registration made in 1875 has also been kept by the Polish government after 1990. Also, technical changes and the growth of marital liberties do not result in any fundamental changes to it.<sup>36</sup> It is

<sup>36</sup> J. Osuchowski, *op. cit.*, p. 107.

clear that the idea of marital status registration created in France and developed in Prussia is universal. Despite Polish-Catholic traditions and examples from other countries, during the 144 years of its being in force in Poland, there was no different or better idea. It is also very probable that it will not change in the nearest and distant future.

### *10.2 Land registers*

The land register system in force in the Kingdom of Prussia was described in Chapter 5. As in the case of other legal regulations, also those concerning land registers were maintained on the territory of the former Prussian partition after Poland regained independence. It happened by virtue of the Act of 1 August 1919 on the temporary organisation of the administration of the former Prussian district.<sup>37</sup> However, there was a doubt as to the nomenclature used when it was translated into Polish. In the ordinance of the Minister of the Former Prussian District of 15 December 1919, the name of the Mortgage Department (*Wydział Hipoteczny*) was introduced. On the other hand, the Polish-German Agreement on the Transfer of Justice of 20 September 1920, ratified by the Act of 26 November 1920,<sup>38</sup> provided for land registers and the Land Registry Department (*Wydział Ksiąg Gruntowych*).<sup>39</sup>

The task of unifying the law on the territory of the reborn state was entrusted to the Codification Commission, which in 1937 presented a draft of the new property law. As far as the land and mortgage register law was concerned, the draft stipulated that registers would be kept in the real system by municipal courts. According to the draft, the functioning of the land and mortgage register system was to be based on the following principles: the universality of land and mortgage registers (obligation to establish land and mortgage registers for all properties except those owned by the state and municipalities), publicity, officiality (entries were made on the basis of public documents), and legality (entries were based on legal and material grounds). The draft also adopted the

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<sup>37</sup> Ustawa z dnia 1 sierpnia 1919 r. o tymczasowej organizacji zarządu b. dzielnicy pruskiej, Dz. Pr. P. P. 1919 64 Item 385.

<sup>38</sup> Układ polsko-niemiecki w przedmiocie przejęcia wymiaru sprawiedliwości, zawarty w Poznaniu dnia 20 września 1920 r., Dz. U. 1920 No. 120 Item 795 and Ustawa z dnia 26 listopada 1920 r. o ratyfikacji układu polsko-niemieckiego w przedmiocie przejęcia wymiaru sprawiedliwości z dnia 20 września 1920 r., Dz. U. 1920 No. No. 120 Item 794.

<sup>39</sup> *Prawo ksiąg gruntowych w b. zaborze pruskim*, ed. A. Kraus, Warszawa-Kraków 1922, p. VI.

principles of constitutive entry and the warranty of public faith. Unfortunately, this draft was not passed by the parliament before World War II.<sup>40</sup>

A fundamental change in the keeping of land and mortgage registers took place only after World War II. On 11 October 1946, three decrees were issued – the law in rem,<sup>41</sup> the law on land and mortgage registers,<sup>42</sup> and the legislation introducing the law in rem and the law on land and mortgage registers.<sup>43</sup> These decrees entered into force on 1 January 1947. What is important is that their construction was based on the already mentioned project from 1937, but they departed from the principle of constitutive entry.<sup>44</sup> A model of land and mortgage registers and the way of keeping them was regulated by the regulation of the Minister of Justice of 26 November 1946 on establishing and keeping land and mortgage registers.<sup>45</sup> Pursuant to the above-mentioned acts, the keeping of land and mortgage registers was entrusted to municipal courts, which were to keep a separate register for each real estate.<sup>46</sup> Land and mortgage registers were to be established ex officio, with the exception of properties that already had mortgage/land registers or land and mortgage registers as defined by the previously applicable provisions, as well as properties owned by the State Treasury or local government associations.<sup>47</sup>

A certain breach of the principles binding in German law was the admittance of keeping, for certain real properties, so-called independent collections of documents, as a surrogate of the land and mortgage register. This institution was introduced by regulations introducing the property law and the law on land and mortgage registers. Collections were established for properties without a land and mortgage register or for properties where the land and mortgage register had been lost or destroyed. Registers were intended for the filing of applications and documents relating to real property, but no entries were made in them.<sup>48</sup>

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<sup>40</sup> M. Deneka, *Księgi wieczyste. Zasady materialnoprawne*, Warszawa 2010, p. 21.

<sup>41</sup> Dekret z dnia 11 października 1946 r. Prawo rzeczowe, Dz. U. 1946 No. 57 Item 319.

<sup>42</sup> Dekret z dnia 11 października 1946 r. Prawo o księgach wieczystych, Dz. U. 1946 nr 57 Item 320.

<sup>43</sup> Dekret z dnia 11 października 1946 r. Przepisy wprowadzające prawo rzeczowe i prawo o księgach wieczystych, Dz. U. 1946 No. 57 Item 321.

<sup>44</sup> M. Deneka, op. cit., p. 21.

<sup>45</sup> Rozporządzenie ministra sprawiedliwości z dnia 26 listopada 1946 r. o urządzeniu i prowadzeniu ksiąg wieczystych, Dz. U. 1946 No. 66 Item 366.

<sup>46</sup> Dekret z dnia 11 października 1946 r. Prawo o księgach wieczystych, Articles 1 and 4.

<sup>47</sup> Dekret z dnia 11 października 1946 r. Przepisy wprowadzające prawo rzeczowe i prawo o księgach wieczystych, Article XIX Paragraph 1 and Article XXI Paragraph 1.

<sup>48</sup> Ibidem, Article XV Point 4.

In general, however, the principles of the system provided for in Prussian law were maintained. These were the principles of:

1. Universality (they should be kept in principle for all properties);
2. Openness (they are open formally and materially);
3. Officiality (an entry may be based only on a document drawn up in the form provided for by the law);
4. Free initiative of the parties (entries are made, in principle, at the request of the parties);
5. Legality (making an entry is ordered by the court if, having examined the content of the land and mortgage register, it decides that the statutory prerequisites for the entry requested exist);
6. Specificity (real estate covered by a land and mortgage register should be precisely marked. The content of rights entered in the real estate register should also be precisely specified).<sup>49</sup>

The decree of 11 October 1946 also limited the principle of entry (*Eintragungsprinzip*) as a statutory prerequisite for creating rights in rem. This principle, basic for Germanic law, had only limited meaning in Polish law from that moment.<sup>50</sup>

The land and mortgage register, according to the new model, contained four parts. The first part included the designation of the real estate and entries of rights related to its ownership. The second part included entries concerning ownership rights. The third part was for entries concerning limited property rights, except for mortgages, for entries concerning limitations in the disposal of the real estate and for entries concerning personal rights and claims, except for claims concerning mortgages. The fourth part was intended for entries concerning mortgages.<sup>51</sup>

The first page of the land and mortgage register bore the name of the municipal court where the register was kept, the name of the county, the number of the land and mortgage register repertory and, if applicable, the number of the volume of the register, as well as a note that the land and mortgage register had been closed and returned to the archives. The land and mortgage book, according to the new model, was given the following form. The first part was divided into ten sections. The first section contained numbers of applications on the basis of

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<sup>49</sup> R. Moszyński, L. Policha, A. Izdebska, *Księgi wieczyste*, Warszawa 1960, pp. 20–22.

<sup>50</sup> L. Górnicki, *Problemy prawnej ochrony nieruchomości, nie wpisanej do ksiąg grunтовых w okresie zaborów i w Polsce niepodległej*, In: *Acta Universitatis Wratislaviensis, Prawo*, Issue 276, *Studia Historycznoprawne*, ed. A. Konieczny, Wrocław 2002, pp. 201–202.

<sup>51</sup> Dekret z dnia 11 października 1946 r. *Prawo o księgach wieczystych...*, Articles 6–10.

which entries were made, sections two to six contained data necessary to describe the real estate, section eight contained a note on the condition of the real estate at the time of establishing the register, on the attachment of other real estates, and on the repeal of discrepancies between the content of sections two to six with the actual condition. In the tenth section, there was a note about detaching a part of the real estate. For entries in the eighth and tenth sections, a reference to the current number of the property affected by the entry was provided in the seventh and ninth sections.<sup>52</sup>

The second part consisted of five sections. In the second section, the owner was entered, and in the third section, the current number of the property to which the entry referred. In the fourth section, the basis for entry was given, and in the fifth section, upon the owner's request, the purchase price, the officially estimated value, and in the case of buildings, the amount of fire insurance.<sup>53</sup>

In the third part, consisting of eight sections, the second and third sections were used to record limited property rights, restriction of the owners' ability to dispose of the property, incapacitation of the owner, and information about the commencement of consolidation proceedings. In the fourth and fifth sections, changes of rights and limitations stated in the second and third sections were entered. Changes were deleted in the sixth section, and rights and restrictions were entered in the second and third sections – in the seventh and eighth sections.<sup>54</sup>

In the fourth part, the second and fourth sections were intended for the entry of a mortgage. Amendments were entered in sections five and seven. Deletion of an amendment was marked in the eighth section, and a mortgage was entered in the ninth and eleventh sections.<sup>55</sup> In all four parts, the first section was used to mention the application for a mortgage.<sup>56</sup>

When comparing the Prussian land register with the land and mortgage registers introduced in 1947, it can be seen that the property register of the land register was equivalent to Part I of the land and mortgage register. Part I of the Land Register corresponded to Part II of the Land and Mortgage Register (owner, basis of ownership acquisition and possible owner shares). Part II of the Land Register was equivalent to Part III of the Land and Mortgage Register

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<sup>52</sup> Rozporządzenie ministra sprawiedliwości z dnia 26 listopada 1946 r..., Article 12.

<sup>53</sup> Ibidem, Article 14.

<sup>54</sup> Ibidem, Article 15.

<sup>55</sup> Ibidem, Article 16.

<sup>56</sup> Ibidem, Article 17.

(encumbrances except for land and annuity debt mortgages), and Part III of the Land Register to Part IV of the Land and Mortgage Register (mortgages, land and annuity debts). The Parts were divided into fields, which were the equivalents of sections. The manner of establishing land and mortgage registers, and the existence of a separate list for the property of an owner, albeit jointly entitled with others, made the land and mortgage registers similar to land registers maintained after 1947. The changeover to them was therefore facilitated.<sup>57</sup> The scope of information given in the land register and mortgage and its layout has not actually changed compared to the earlier period.<sup>58</sup>

New legislation concerning the keeping of land and mortgage registers was introduced by the Act of 16 October 1964,<sup>59</sup> whereby keeping registers was transferred to state civil law notary offices for 27 years. It was thus the first major departure from the German model of land registry and a breach of the principle of entrusting land registry to ordinary courts.

Minor changes to the land and mortgage register system were also introduced under the Act of 23 April 1964 – legislation implementing the Civil Code.<sup>60</sup> This law amended, inter alia, certain provisions concerning the principle of universality. In general, however, it did not lead to fundamental changes.<sup>61</sup>

Further changes were brought about by the Act of 6 February 1982 on Land and Mortgage Registers,<sup>62</sup> which is currently in force, as amended, and the Act of 14 February 1991 on the Law on Notaries and on amendments to the Code of Civil Procedure and to the Act on Land and Mortgage Registers,<sup>63</sup> which transferred back the keeping of land and mortgage registers to the jurisdiction of district courts.

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<sup>57</sup> R. Moszyński, L. Policha, A. Izdebska, op. cit., pp. 128–129.

<sup>58</sup> H. Ciechanowski, *Wpływ pruskich ksiąg gruntowych na powstanie elektronicznych ksiąg wieczystych w Polsce*, In: *Dzieje biurokracji*, tom VI, ed. T. Bykowa, A. Górak, G. Smyk, Lublin 2016, p. 829.

<sup>59</sup> Ustawa z dnia 16 listopada 1964 r. o przekazaniu państwowym biuram notarialnym prowadzenia ksiąg wieczystych, Dz. U. 1964 No. 41 Item 278.

<sup>60</sup> Ustawa z dnia 23 kwietnia 1964 r. – przepisy wprowadzające Kodeks Cywilny, Dz. U. 1964 No. 16 Item 94, Article XX.

<sup>61</sup> A. Menes, *Wiadomości wstępne dotyczące ksiąg wieczystych*, Rejent, Issue 4, 1994, p. 60.

<sup>62</sup> Ustawa z dnia 6 lutego 1982 r. o księgach wieczystych i hipotece, Dz. U. 1982 No. 19 Item 147.

<sup>63</sup> Ustawa z dnia 14 lutego 1991 r. prawo o notariacie oraz o zmianie kodeksu postępowania cywilnego i ustawy o księgach wieczystych, Dz. U. 1991 No. 22 Item 92.

Pursuant to the Act of 1982, the land and mortgage register contains four sections, of which the first section includes the designation of real property and entries of rights related to its ownership, the second section includes entries pertaining to ownership and perpetual usufruct, the third section is intended for entries pertaining to limited rights in rem, except for the mortgage, entries of limitations in the disposal of real property or perpetual usufruct and entries of other rights and claims, except for claims pertaining to mortgages, the fourth section is intended for entries of the mortgage. A separate model of a land and mortgage register has been introduced for a cooperative ownership right to premises, which consists of four sections: 1) the first one includes the designation of the premises or detached house and the designation of the real estate with which it is connected; 2) the second one includes entries concerning the person to whom the cooperative ownership right to the premises is granted; 3) the third one is intended for entries of limitations in the disposal of the right and entries of other rights and claims, except for claims concerning mortgages; 4) the fourth one is intended for entries concerning mortgages.<sup>64</sup>

According to the Regulation of the Minister of Justice of 18 March 1992 on enforcement of the provisions of the Act on Mortgage and Land and Mortgage Registers, on the first page of the land and mortgage register bore the name of the court, name of the municipality (town), land and mortgage register repertory number and the number of the land and mortgage register volume, as well as a standardised inscription stating what type of real property the land and mortgage register concerns.<sup>65</sup> Part I of the Land and Mortgage Register consisted of two parts “Designation of property” (Section I – O) and “Inventory of rights related to ownership”. Part I-O contains information on the location of the property, its area and use, the designation of the plots of land comprising it and information on buildings, premises and other facilities. Part I-Sp of the Inventory of Rights Relating to Ownership discloses the rights to which each contemporary owner of the real property is entitled. In the land and mortgage register maintained for a real estate with premises, the share of the owner in the common real estate is entered, and in the case of a cooperative ownership right to premises, the relevant cooperative is mentioned here. This part also includes the date by which the perpetual usufruct was established and the manner of using the real

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<sup>64</sup> Ustawa z dnia 6 lipca 1982 r. o księgach wieczystych i hipotece, Article 25.

<sup>65</sup> Rozporządzenie Ministra Sprawiedliwości z dnia 18 marca 1992 r. w sprawie wykonywania przepisów ustawy o księgach wieczystych i hipotece, Dz. U. 1992 No. 29 Item 128, Article 11.



property resulting from the agreement on its establishment.<sup>66</sup> Parts II to IV were not internally divided. All sections, just like before, were divided into the so-called “sections”, in which legally specified information was entered. In all models of the land register, the scope of information introduced in the Prussian kingdom was basically maintained, only adapting it to the changing legal situation and introducing new forms of ownership.

Since 2001, the Sejm has simplified the registration procedure and opened the way to create an electronic land and mortgage register.<sup>67</sup> Pursuant to the Act of 24 May 2013, amending the Act on Mortgage and Land and Mortgage Registers,<sup>68</sup> land and mortgage registers are established and maintained in the IT system. The books maintained in the IT system still consist of four parts analogous to the 1982 model. A certain novelty is the abandonment of the division into sections and their replacement with boxes, fields and sub-fields.<sup>69</sup> This is necessitated by the nature of information systems. This change did not bring about a fundamental change in the content of the books (the previously described structure of the book was maintained), but only a division of the previously extensive entries into more synthetic parts.<sup>70</sup>

The doctrine of civil law still points to five substantive and legal principles of keeping land and mortgage registers, which have been in force in Poland since the times of the Prussian partition. These principles are as follows:

1. Entry;
2. Presumptions about an entry;

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<sup>66</sup> P. Mysiak, *Postępowanie wieczystoksięgowe*, LexisNexis, Warszawa 2010, p. 53.

<sup>67</sup> A. Chruściel, L. Pomeranke, *Akta gruntowe i księgi wieczyste z lat 1775–1995. Kancelaria i metody porządkowania*, In: *Archiwa instytucji wymiaru sprawiedliwości. III Krajowe Sympozjum Archiwalne, Łódź 4–5 września 2001 r.*, ed. J. Baranowski, U. Zarzycka-Sutter, Łódź 2001, p. 166. For more on the computerization of land and mortgage registers in Poland, see A. Gryszczyńska, *Nowa Księga Wieczysta. Informatyzacja rejestru publicznego*, Warszawa 2011, p. 424.

<sup>68</sup> Ustawa z dnia 24 maja 2013 r. o zmienia ustawy o księgach wieczystych i hipotece, Dz. U. 2013 Item 941.

<sup>69</sup> Rozporządzenie Ministra Sprawiedliwości z dnia 21 listopada 2013 r. w sprawie zakładania i prowadzenia ksiąg wieczystych w systemie informatycznym, Dz. U. 2013 Item 1411, Article 5 Paragraph 1, and now Rozporządzenie Ministra Sprawiedliwości z dnia 15 lutego 2016 r. w sprawie zakładania i prowadzenia ksiąg wieczystych w systemie teleinformatycznym, Dz. U. 2016 Item 312, Paragraph 3.1.

<sup>70</sup> H. Ciechanowski, *Księga wpisów od średniowiecza do XXI wieku na przykładzie rejestracji wieczystej*, In: *Belliculum diplomaticum VI Thorunense*, ed. K. Kopiński, J. Tandecki, Toruń 2016, p. 16.

3. Credibility (warranty of public credibility of land and mortgage registers);
4. Priority of limited rights in rem entered in the Land and Mortgage Register;
5. Extended effectiveness of personal rights and claims disclosed in the Land and Mortgage Register.<sup>71</sup>

Changes in the organisation and operation of land and mortgage registers introduced by acts of 1997–2001, as well as the beginning of computerisation of registers, were to lead to their transformation into a completely new institution for the 21st century. However, the analysis shows that the basic principles of operation of this register remain unchanged, as do its main functions.<sup>72</sup>

In principle, therefore, the general principles for keeping real estate records and rights thereto, such as the obligation to keep them and the warranty of public credibility, derive from Prussian legislation.<sup>73</sup> The scope of the information collected in land and mortgage registers nowadays and in the Prussian state is also similar. It is, therefore, evident that the Prussian regulations have been modelled on them. The influence of Prussian land registers on the creation of the electronic land register is unquestionable. This is all the more so as the electronic land register is based on earlier models, the evolution of which we have traced and which draw primarily on Prussian models.

### *10.3 Land and building tax cadastre*

After Poland regained independence, the Prussian cadastre continued to operate in the former Prussian partition but adapted its regulations and instructions to the needs of the Polish economy.<sup>74</sup> The administration of the reborn state acted similarly in the other annexed territories. In the whole country, only the land tax rates were unified.<sup>75</sup>

On the territory of the former Prussian partition, the Polish authorities took over from Prussia 38 cadastral offices (*Katasteramt*), in which 89 technical clerks and 139 office clerks worked. However, the change of statehood did not immediately affect the records produced in the offices. The first traces began to

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<sup>71</sup> M. Deneka, op. cit., p. 64.

<sup>72</sup> T. Stawecki, op. cit., p. 313.

<sup>73</sup> B. Jelonek-Jarco, *Rękopisma wiary publicznej ksiąg wieczystych*, Warszawa 2011, p. 17.

<sup>74</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, *Kataster gruntowy w Wielkopolsce – historia i teraźniejszość*, Przegląd Geodezyjny, Issue 11, 1995, p. 18.

<sup>75</sup> M. Mika, *Historia katastru polskiego*, Infrastruktura i ekologia terenów wiejskich, Issue 6, 2010, p. 77.

appear only in 1921.<sup>76</sup> This was a situation similar to that in the case of registry offices.

In the end, therefore, in Poland in the interwar period, as during the partitions, the name cadaster referred to a set of maps and registers used for determining the land tax, and the cadastre had an institutionalised character, as it was kept by cadastral offices.<sup>77</sup> Nonetheless, the Polish authorities were aware of the different accuracy of measurements made by Prussian and Austrian surveyors. For this reason, until the outbreak of World War II, verification works were carried out in order to determine the accuracy of previous surveying measurements, and updating and supplementary measurements were made.<sup>78</sup>

From the very beginning, the cadastral administration was subordinated to the Ministry of Public Works, which exercised supervision over it through the surveying departments of voivodeship offices. The cadastral administration (surveying department) was part of the voivodeship office subordinated to the voivode or his deputy.<sup>79</sup> In 1925 the administration of the cadastre in the former Prussian district was subordinated to the Ministry of Treasury, which supervised the cadastral boards and cadastral offices.<sup>80</sup> At the same time, these units were excluded from the competence of a voivode and subordinated to fiscal chambers. As of 1 August 1933, cadastral offices were abolished as independent organisational units and incorporated into tax offices. In cities, where more than one tax office operated, the cadastral administration reported to the former.<sup>81</sup>

The beginning of the organisation of a uniform land cadastre throughout the country was the law of 26 March 1935 on land classification for land tax purposes.<sup>82</sup> As a result of its provisions, a preliminary draft of the Land Registers Act was developed in 1938, but unfortunately, the codification works were interrupted by the war.<sup>83</sup>

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<sup>76</sup> G. Roczek, *Akta urzędów katastralnych w zasobie Archiwum Inowrocławskiego*, Archeion, Issue 84, 1988, p. 76.

<sup>77</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 17.

<sup>78</sup> D. Felcenloben, *Kataster nieruchomości rejestrem publicznym*, Katowice 2009, p. 245.

<sup>79</sup> G. Roczek, op. cit., p. 77.

<sup>80</sup> Rozporządzenie Rady Ministrów z dnia 9 września 1925 r. w sprawie zmiany kompetencji Ministra Robót Publicznych i Ministra Skarbu odnośnie do spraw katastralnych w wojództwie poznańskim i pomorskim, Dz. U. 1925 No. 98 Item 691.

<sup>81</sup> G. Roczek, op. cit., pp. 79–80.

<sup>82</sup> Ustawa z dnia 26 marca 1935 r. o klasyfikacji gruntów dla podatku gruntowego, Dz. U. 1935 No. 27 Item 203.

<sup>83</sup> M. Mika, op. cit., p. 77.

After World War 2, the first legal act which recognised the need to establish and continue the land cadastre in Poland was the Decree of 1945 on surveying the country and organisation of surveying, which established the Main Land Surveying Office (*Główny Urząd Pomiarów Kraju*) to carry out the work.<sup>84</sup> Its tasks included: collecting and preserving all surveying materials that survived the war. The Main Surveying Archive (*Główne Archiwum Miernicze*) was separated from the Main Land Surveying Office structures. At the same time, it had field organs, which were surveying departments (*wydział pomiarowy*) in voivodship offices (*urząd wojewódzki*) and surveying offices (*referat pomiarowy*) in district offices (*starostwo powiatowe*). The task of measurement departments was to keep records of basic measurements, maintain local measurement archives and coordinate applied measures. Measuring offices were responsible for maintaining records of measurements carried out on their territory and keeping the measuring archives.<sup>85</sup> A uniform cadastre was established, however, only by virtue of the decree of 24 September 1947 on land and building cadastre, by virtue of which also the earlier regulations of the partitioning states binding on the territory of Poland were annulled.<sup>86</sup>

According to the decree's provisions, the cadastre was to serve as a description basis for marking out real estate while establishing and maintaining land and mortgage registers, for assessing land tax and other public benefits, and as a source of information and data on land and its owners for various fields of community and economic life. The cadastre was to be linked to the institution of land and mortgage registers and to keep a building cadastre.<sup>87</sup> Importantly, these provisions were based on previous German regulations.<sup>88</sup> Unfortunately, the system established in 1947 did not come into force which was related to the

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<sup>84</sup> Dekret z dnia 30 marca 1945 r. o pomiarach kraju i organizacji miernictwa, Dz. U. 1945 No. 11 Item 58.

<sup>85</sup> U. Markiewicz, *Państwowy zasób geodezyjny i kartograficzny w zasobie Archiwum Państwowego w Szczecinie – zagadnienia archiwootwórcze i problemy opracowania*, Archeion, Issue 117, 2016, p. 217.

<sup>86</sup> Dekret z dnia 24 września 1947 r. o katastrze gruntowym i budynkowym, Dz. U. 1947 No. 61 Item 344, Article 14 Paragraph 2. Implementing regulations to the decree were issued as late as in 1950, i.e. Rozporządzenie Ministra Budownictwa z dnia 6 grudnia 1950 r. w sprawie postępowania przy organizacji, zakładaniu i prowadzeniu katastru gruntowego i budynkowego, Dz. U. 1950 No. 57 Item 520.

<sup>87</sup> Dekret z dnia 24 września 1947 r. o katastrze gruntowym i budynkowym, Dz. U. 1947 No. 61 Item 344, Article 2.

<sup>88</sup> J. Andrzejewski, A. Krygier, W. Sztukiewicz, op. cit., p. 19.

process of village collectivisation, lack of uniform land classification and a three-year delay in issuing implementing regulations for the decree.<sup>89</sup>

In 1952 the Main Land Surveying Office was replaced by the Central Office of Geodesy and Cartography (*Centralny Urząd Geodezji i Kartografii*), responsible for carrying out surveying and cartographic works on the territory of Poland.<sup>90</sup> At the same time, the concept of state geodetic and cartographic resources was introduced. In 1956, the Central Office of Geodesy and Cartography replaced the Main Office of Geodesy and Cartography (*Główny Urząd Geodezji i Kartografii*).<sup>91</sup>

The cadastral system was fundamentally changed by the decree of 2 February 1955 on the land and building register,<sup>92</sup> supplemented by the ordinance of the Minister of Agriculture and Municipal Economy of 2 February 1969 on the land register.<sup>93</sup> By virtue of these legal acts, the name “land and building registration” was adopted instead of “cadaster”.<sup>94</sup>

This new register, according to the regulations establishing it, was to be the basis for economic planning, tax and benefit assessment, purchase and supply obligations, entries in land registers and satisfying economic needs for the whole country. The registration office was a public document.<sup>95</sup> Notably, after the relevant legislation on land classification and survey work was issued, it was possible to start survey work, which lasted for more than 10 years.<sup>96</sup>

The law was further amended in 1989 with the establishment of a new Geodetic and Cartographic Law.<sup>97</sup> However, the first step towards establishing a cadastre in Poland was the Regulation of the Ministers of Spatial Planning and Construction, and Agriculture and Food Management dated 17 December 1996,

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<sup>89</sup> D. Felcenloben, op. cit., p. 246.

<sup>90</sup> Dekret z dnia 24 kwietnia 1952 r. o państwowej służbie geodezyjnej i kartograficznej, Dz. U. 1952 No. 24 Item 162.

<sup>91</sup> U. Markiewicz, op. cit., pp. 218–219.

<sup>92</sup> Dekret z dnia 2 lutego 1955 r. o ewidencji gruntów i budynków, Dz. U. 1955 No. 6 Item 32.

<sup>93</sup> Zarządzenie Ministra Rolnictwa oraz Gospodarki Komunalnej z 2 lutego 1969 r. w sprawie ewidencji gruntów, M. P. 1969 No. 11 Item 98.

<sup>94</sup> T. Stawecki, op. cit., p. 371.

<sup>95</sup> D. Felcenloben, op. cit., pp. 246–247.

<sup>96</sup> P. Dziurzyński, *Ewidencja gruntów a księgi wieczyste*, *Więś współczesna*, Issue 6, 1969, pp. 111–112.

<sup>97</sup> Ustawa z dnia 17 maja 1989 r. Prawo geodezyjne i kartograficzne, Dz. U. 1989 No. 30 Item 163.

on the land and buildings register,<sup>98</sup> amended by the Regulation of the Minister of Regional Development and Construction dated 29 March 2001, on the land and buildings register.<sup>99</sup> Currently, the operation of the Land and Building Register is regulated by the Regulation of the Minister of Development, Labour and Technology issued on 27 July 2021.<sup>100</sup>

The primary purpose of land and building registration is to provide information on land, buildings and premises, enabling the following tasks:

1. implementation of legal purposes – for the needs arising from maintaining land registers and performing other legal activities;
2. spatial planning – for the needs of preparing local spatial development plans, in the scope of land information concerning the registration items and buildings, especially the plot boundaries, and in the scope of information about the subjects of the rights to the land and building registration items
3. real estate management – for the needs of carrying out geodetic and legal processes such as division of the real estate, expropriation of real estate and others;
4. real estate trade – for the needs of the real estate market, especially as a source of information about the area used to determine those attributes of the property that affect the determination of the value of the property;
5. tax assessment calculation – for determining the assessment basis of the current real estate tax, agricultural tax, forestry tax and in the future for determining the assessment basis of the real estate tax, also called cadastral tax;
6. calculation of agricultural production subsidies – for the needs of the Integrated Administration and Control System (ICAS), serving governmental institutions of the European Union member states;
7. statistical purposes – for compiling aggregate lists for public statistics and decision support for planning authorities.<sup>101</sup>

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<sup>98</sup> Rozporządzenie Ministrów Gospodarki Przestrzennej i Budownictwa oraz Rolnictwa i Gospodarki Żywnościowej z dnia 17 grudnia 1996 r. w sprawie ewidencji gruntów i budynków, Dz. U. 1996 No. 158 Item 813.

<sup>99</sup> Rozporządzenie Ministra Rozwoju Regionalnego i Budownictwa z dnia 29 marca 2001 r. w sprawie ewidencji gruntów i budynków, Dz. U. 2001 No. 38 Item 454.

<sup>100</sup> Rozporządzenie Ministra Rozwoju, Pracy i Technologii z dnia 27 lipca 2021 r. w sprawie ewidencji gruntów i budynków, Dz. U. 2021 Item 1390.

<sup>101</sup> Ustawa z dnia 17 maja 1989 r. Prawo geodezyjne i kartograficzne, Dz. U. 1989 No. 30 Item 163, Article 21, Ustawa z dnia 29 czerwca 1995 r. o statystyce publicznej, Dz. U. 1995 No. 88 Item 439 and R. Hycner, *Podstawy katastru*, Kraków 2004, p. 44.

The Land and Building Register, as a spatial information system, comprises two types of data: spatial and descriptive. Spatial data specifies the location of objects in the form of marking presented on the registration map, while descriptive data characterises these objects in terms of various features. Descriptive data comprises two groups. The first one includes data concerning the factual state of an object, e.g. type of use, the material of building walls, type of premises, and others. These data, as they describe the factual state, are binding for all registering entities and public administration bodies. The second group of data is legal data, e.g. owner, perpetual usufructuary, etc. However, these data are not covered by the presumption of reliability. Descriptive data is disclosed in the Land and Building Register in various types of documents, such as registers, directories, lists, etc. The most important descriptive documents in the Land and Building Register are undoubtedly land registers, building registers, and premises registers, in which, on the basis of the spatial designation of objects, their description is carried out. Among the registers of the Land and Building Register, the most important is the land register.<sup>102</sup> At present, these registers are maintained in the form of a database.<sup>103</sup>

The main principles guiding the registration are reliability, universality, uniformity, completeness and limited openness.<sup>104</sup> These were, therefore, essentially the same principles that guided the Prussian cadaster.

The former and current cadastral systems in force in Poland may be compared. This comparison is presented in the table 6.

The above summary shows that although there are some differences between the listed cadastral systems, they are relatively similar to each other. All of them also had a clearly marked cartographic and descriptive part.<sup>105</sup> At the same time, it should be emphasised that the system introduced in 1947 was much more related to German models than the land and building register maintained today. It should also be highlighted that probably the most important purpose of the register is the legal one concerning the establishment of land and mortgage registers, entries of rights into the land and mortgage registers and other related tasks, as all these activities are performed on the basis of data obtained from

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<sup>102</sup> Ibidem, pp. 46–47.

<sup>103</sup> Ustawa z dnia 17 maja 1989 r. Prawo geodezyjne i kartograficzne, Dz. U. 1989 No. 30 Item 163 (consolidated text based on Dz. U. 2020 Item 2052, 2021 Item 922 i 1641), Article 24 Paragraph 1.

<sup>104</sup> R. Hycner, op. cit., pp. 45–46.

<sup>105</sup> Ibidem, p. 29.

**Table 6.** Comparison of former and current cadastral systems in Poland

Type of cadastre	Qualifying feature	Polish cadastre	Austrian cadastre	Prussian and German cadastre
Land (building, premises) cadastre	1. Registry name	Land and buildings register	Land tax cadastre	Land tax and buildings cadastre
	2. Item	Plot	Parcel	Parcel
	3. Cadastral unit	Commune (Precinct)	Commune	Precinct
	4. Establishment of borders of cadastral unit	According to land survey and cadastre	Boundary Record I and II	During parcel survey
	5. Establishment of boundaries and holding status	On land, boundaries of ownership of holding	On land, boundaries of parcel ownership	On land, boundaries of parcel ownership
	6. Cadastral survey	Parcel register and list of plots	Parcel record	parcel Register
		Land registry	Land estate sheet	Land tax matrix
		Index of owners and holders	Alphabetical list of proprietors	[Alphabetical list of owners – HC]
		Register of buildings	-	Building tax register
		Register of dwellings	-	-
Legal cadastre	1. Name of register	Land and mortgage register	Land and mortgage register – no of mortgage index	[Land – HC] register
	2. Object of register	Land estate	Land estate	Plot
	3. Component of the register	Parts: I, II, III and IV	sheet A, B, C	Parts: I, II, III
	4. General rule	One land and mortgage register for one land estate	Number of digits of mortgage index for land estate	Set of indexes for a set of [one index for one property – HC]

Source: R. Hycner, *Podstawy katastru*, Kraków 2004, p. 30.



the register.<sup>106</sup> Despite all changes, the connection between the current cadastral system and land and mortgage registers also remained extremely strong.

To sum up, it should be noted that the Land and Building Register currently maintained in Poland is the result of evolution in this field in the 20th century. At the same time, the influence that solutions applied in German law had on shaping this institution is visible. This is all the more important as there were no adequate Russian models for the reborn State of Poland to follow.<sup>107</sup>

#### *10.4 Commercial register and its derivatives*

In Poland, a commercial register was introduced during the Prussian and Austrian partitions, which took place already in the first half of the 19th century. However, it was not introduced throughout the country until after the partitions.<sup>108</sup> Initially, after the restoration of independence in the former Prussian and Austrian partitions, the law in force on their territory was maintained, including, inter alia, commercial law and their registration systems.<sup>109</sup> In the so-called central district, however, the commercial register was organised anew on the basis of the Commercial Register Decree of 7 February 1919.<sup>110</sup> The provisions of this decree derived from solutions adopted under German law<sup>111</sup> and its implementing legislation.<sup>112</sup> The validity of the decree was extended in 1919–1922 also to the area of the eastern provinces.<sup>113</sup>

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<sup>106</sup> Ibidem, p. 43.

<sup>107</sup> T. Stawecki, op. cit., p. 370.

<sup>108</sup> Z. Żabiński, *Rejestr handlowy*, Kraków 1946, p. 5.

<sup>109</sup> E. Długajczyk, *Historia, organizacja i archiwalne opracowanie rejestru handlowego. (Na przykładzie Archiwum Państwowego w Katowicach)*, Szkice Archiwalno-Historyczne, Issue 1, 1998, p. 155.

<sup>110</sup> Dekret o rejestrze handlowym, Dz. Pr. P. P. 1919 No. 14 Item 164.

<sup>111</sup> A. Chełmoński, *Rejestr handlowy na tle dekretu z dnia 7 lutego 1919 r.*, Wilno 1929, p. 3.

<sup>112</sup> Rozporządzenie Ministra Sprawiedliwości w porozumieniu z Ministrami Przemysłu i Handlu oraz Skarbu w przedmiocie określenia osób, zajmujących się handlem drobnym, Dz. Pr. P. P. 1919 37 Item 278; Rozporządzenie Ministra Sprawiedliwości o rejestrze handlowym, Dz. Pr. P. P. 1919 No. 37 Item 279 and Rozporządzenie Ministra Sprawiedliwości w porozumieniu z Ministrem Skarbu oraz Ministrem Przemysłu i Handlu o opłatach w postępowaniu rejestrowym, Dz. Pr. P. P. 1919 37 Item 280.

<sup>113</sup> Ustawa z dnia 31 lipca 1919 r. o prawach, obowiązujących w okręgu sądowym białostockim w zakresie sądownictwa, Dz. Pr. P. P. 1919 64 Item 382, Article 4, Rozporządzenie Rady Ministrów z dnia 6 marca 1922 r. w przedmiocie rozciągnięcia dekretu o rejestrze

It is worth mentioning, however, that in the area where the decree was in force, already during the German occupation of the Congress Kingdom, by the decree of the Warsaw Governor General of 1 November 1917 on the commercial register, a commercial register modelled on the German register was established.<sup>114</sup> However, these rules were repealed under Polish law.<sup>115</sup>

The commercial register (*rejestr handlowy*) kept in 1919 consisted of 3 parts: A – for sole traders, partnerships and limited partnerships, B – for limited liability companies, joint-stock companies and limited joint-stock partnerships, and C – for associations and unions recognised as commercial.<sup>116</sup> Registration activities were carried out by a district court judge designated by the president as a registration judge. Technically, however, they were carried out by the Registrar. The register itself was kept by the company, and all those recognised as traders by the Napoleonic code and other laws were subject to registration. The only exceptions were small merchants.<sup>117</sup> The importance of Section C of the register was soon reduced as the Law on Cooperatives passed in 1920 introduced a separate register of cooperatives<sup>118</sup> applicable throughout the country.<sup>119</sup> However, this register was very similar in form and content to the commercial register.<sup>120</sup>

The legal status in force since 1919 was unified and amended by the Commercial Code (*Kodeks Handlowy*) established by the President of the Republic of Poland on 27 June 1934. The provisions of the new code were applicable nationwide.<sup>121</sup> The structure of the register, on the other hand, was determined by

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handlowym i ustawy o spółdzielniach na województwa: nowogródzkie, poleskie i wołyńskie oraz na powiaty: białowiecki, grodzieński i wołkowyski województwa białostockiego, Dz. U. 1922 No. 21 Item 170, Rozporządzenie Rady Ministrów z dnia 10 sierpnia w przedmiocie rozciągnięcia mocy obowiązującej ustawy o zatwierdzaniu i zmianie statutów spółek akcyjnych i o spółdzielniach oraz dekretu o rejestrze handlowym na Ziemię Wileńską, Dz. U. 1922 No. 74 Item 668, Paragraph 1.

<sup>114</sup> A. Chelmoński, op. cit., p. 6.

<sup>115</sup> Z. Żabiński, op. cit., p. 19.

<sup>116</sup> Rozporządzenie Ministra Sprawiedliwości o rejestrze handlowym, Dz. Pr. P. P. 1919 No. 37 Item 279, Article 15.

<sup>117</sup> Z. Żabiński, op. cit., p. 20.

<sup>118</sup> Ustawa z dnia 29 października 1920 r. o spółdzielniach, Dz. U. 1920 No. 111 Item 733.

<sup>119</sup> M. Wrzolek-Romańczuk, op. cit., p. 15.

<sup>120</sup> E. Długajczyk, op. cit., p. 159.

<sup>121</sup> Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 czerwca 1934 r. Kodeks handlowy, Dz. U. 1934 No. 57 Item 502. and Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 czerwca 1934 r. Przepisy wprowadzające kodeks handlowy, Dz. U. No. 57 Item 503.

an ordinance issued on 1 July 1934.<sup>122</sup> These provisions were based on the general principles of non-litigious proceedings<sup>123</sup> and also drew on the models of German legislation. Despite many amendments, the provisions of the 1934 Commercial Code remained in force in Poland until 2000.<sup>124</sup>

According to the new legislation, the commercial register consisted of four parts constituting separate books. Part A included sole proprietorships, general and limited partnerships and legal persons who were not commercial companies, but conducted a larger-scale commercial enterprise; Part B included limited liability companies, joint-stock companies and mutual insurance companies; Part C included foreign limited liability and joint-stock companies; and Part D included state enterprises.<sup>125</sup> The fifth part, as it were, was the register of cooperatives, which, as in German law, was kept under different regulations and separately but corresponded entirely to the commercial register.<sup>126</sup>

It should be noted that the principles concerning keeping the German commercial code described in Chapter 6 were generally incorporated by the Polish legal system. The first similarity was already the imposition of the obligation to keep this register by the courts and not, for example, by the bodies of the economic self-government or the administrative offices.<sup>127</sup>

However, the Polish law introduced certain differences compared to the German prototype. First of all, while in the German legislation the basis for entry was a declaration, in the Polish legislation the declaration in the form of documents was essential. A personal statement was only supplementary.<sup>128</sup>

When the court commenced the registration procedure, it first conducted a formal examination, in which it verified its ownership and admissibility of the

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<sup>122</sup> Rozporządzenie Ministra Sprawiedliwości z dnia 1 lipca 1934 r. wydane w porozumieniu z Ministrem Przemysłu i Handlu, a nadto co do §§ 5, 8, 55, 62, 65–69 i 77 w porozumieniu z Ministrem Skarbu, a co do §§ 60 i 64 w porozumieniu z Ministrem Komunikacji oraz Poczty i Telegrafów o rejestrze handlowym, Dz. U. 1934 No. 59 Item 511.

<sup>123</sup> Z. Żabiński, op. cit., p. 7.

<sup>124</sup> It was repealed by Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz. U. 2000 No. 94 Item 1037.

<sup>125</sup> Rozporządzenie Ministra Sprawiedliwości z dnia 1 lipca 1934 r. wydane w porozumieniu z Ministrem Przemysłu i Handlu, a nadto co do §§ 5, 8, 55, 62, 65–69 i 77 w porozumieniu z Ministrem Skarbu, a co do §§ 60 i 64 w porozumieniu z Ministrem Komunikacji oraz Poczty i Telegrafów o rejestrze handlowym, Dz. U. 1934 No. 59 Item 511, Paragraph 3.

<sup>126</sup> Z. Żabiński, op. cit., p. 38.

<sup>127</sup> A. Chełmoński, op. cit., p. 68.

<sup>128</sup> Ibidem, p. 135.

entry, as well as the entitlement of the applicant to make the application. Next, the court checked whether the application was properly signed, whether it had the required attachments and whether its content was admissible, and finally, whether the attachments on which the application was based had the appropriate form and content. It was the court's absolute duty to examine these circumstances. The court of registration also carried out a substantive examination, which consisted of examining whether the reported data were consistent with the facts. This examination was carried out if the court had reasonable doubts in this respect. It was therefore not mandatory and depended entirely on the court's discretion.<sup>129</sup> The registry court also had similar functions with respect to the examination of applications in relation to entries in the register of cooperatives.<sup>130</sup>

Also, as in German law, *ex officio* entry, made on the basis of Article 17 of the Commercial Code, was an utterly exceptional form of entry, provided for only in the event of non-compliance by those who were obliged to do so and the court had the necessary information to make the entry. *Ex officio* entry was also possible in cases that were under the direction or supervision of the court.<sup>131</sup>

As in the case of the German register, the Polish commercial register was public, and all data entered therein was subject to the compulsory announcement through its publication. Originally (since 1919), the announcement was made in the official gazette and one of the local newspapers, but since 1934, entries have been published in *Monitor Polski*.<sup>132</sup>

In Polish law, in contrast to German law, there was a principle of credibility in the form of a presumption. It was already introduced on the basis of Article 10(1) of the Commercial Register Decree of 1919 and was maintained (in the form of legal credibility) on the basis of Article 24 of the Commercial Code of 1934.<sup>133</sup> It is worth noting that the principle contained in the 1919 Decree, with the exception of the passage on the reliability of entries, was practically identical to the wording of para. 15 of the German Commercial Code (*Niemiecki Kodeks Handlowy*). The statutorily granted credibility of entries in the Polish commercial register was the major difference from the solutions applied in German law.<sup>134</sup>

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<sup>129</sup> T. Majtas, *Rejestr handlowy*, Poznań 1995, pp. 10–11.

<sup>130</sup> M. Wrzolek-Romańczuk, *op. cit.*, p. 131.

<sup>131</sup> Z. Żabiński, *op. cit.*, p. 64.

<sup>132</sup> Dekret o rejestrze handlowym, Dz. Pr. P. P. 1919 No. 14 Item 164, Article 8 and Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 czerwca 1934 r. Kodeks handlowy, Dz. U. 1934 No. 57 Item 502, Article 22.

<sup>133</sup> Z. Żabiński, *op. cit.*, pp. 90–91.

<sup>134</sup> A. Chełmoński, *op. cit.*, pp. 12–13.

Importantly, the principle of reliability contained in the 1919 Decree also applied to the register of cooperatives.<sup>135</sup>

During the period of the People's Republic of Poland, the cooperative law was amended. This happened by virtue of the Act of 17 February 1961 on cooperatives and their associations,<sup>136</sup> and then the Act of 16 September 1982 – Cooperative Law.<sup>137</sup> As discussed in the literature, the substantive legal construction of the register of cooperatives did not undergo any fundamental changes in the legal status in force in 1982. The basic pillars of this institution remained intact.<sup>138</sup>

The provisions concerning registration in the commercial register and the register of cooperatives were only amended by the Act of 20 August 1997 on the National Court Register (*Krajowy Rejestr Sądowy*),<sup>139</sup> which required that registration be transferred to the newly created National Court Register. Thus, as of 1 January 2001, the above registers were digitized. They are still kept by courts of first instance – in this case, by selected district courts. Their activity is supplemented by the Central Information of the National Court Register, which has its branches in district courts responsible for keeping the register. The Central Information is responsible for providing access to information from the register.

The current legal situation is based on the National Court Register Act of 1997. Thus, there have not been many reforms concerning the keeping of commercial and cooperative registers since the 19th century. It should also be emphasised that the individual provisions described in the following subchapter were closely modelled on each other. The rules of keeping registers described in Chapter 6, as well as partly in the above chapter with reference to the Polish legislation of the interwar period, are therefore also the basis for the operation of the National Court Register, which is not new in this respect.

The National Court Register covers in its scope numerous entities listed in the 1997 Act and, for this reason, consists of three different parts:

1. Register of Entrepreneurs;
2. Register of associations, other social and professional organisations, foundations and public health care institutions;
3. Register of Insolvent Debtors.

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<sup>135</sup> M. Wrzolek-Romańczuk, op. cit., p. 78.

<sup>136</sup> Ustawa z dnia 17 lutego 1961 r. o spółdzielniach i związkach, Dz. U. 1961 No. 12 Item 61.

<sup>137</sup> Ustawa z dnia 16 września 1982 r. Prawo spółdzielcze, Dz. U. 1982 No. 30 Item 210.

<sup>138</sup> M. Wrzolek-Romańczuk, op. cit., p. 121.

<sup>139</sup> Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym, Dz. U. 1997 No. 121 Item 769.

The Register of Entrepreneurs contains data on all commercial law companies, cooperatives, state enterprises, research and development units, and mutual insurance companies, including the main branches of foreign insurers in Poland, as well as other branches of foreign entrepreneurs.<sup>140</sup>

The major change that has taken place with regard to registration since 1 January 2001 is the centralisation of registers. Before the introduction of the National Court Register, each local register functioned in principle as a separate entity, and the flow of information between registers occurred only exceptionally. The National Court Register, on the other hand, is a central register which brings together in one place all the data that is subject to registration from across the country. The idea behind the National Court Register was to integrate different types of registers, meaning that all persons obliged to be entered are registered in one central register covering the whole country. The creation of the National Court Register thus meant the closure of a completely dispersed system of subjective registers, and hence a period of coexistence of more than twenty public court subjective registers. These registers were kept by various courts, selected according to different principles of hierarchical, material and local jurisdiction. At present, the National Court Register is maintained by district courts which, as a rule, have their seats in towns that are the seat of a voivode and which cover the area of a voivodship. To illustrate this problem in numbers, at present, there are 21 district courts comprising 27 commercial divisions responsible for keeping the register.<sup>141</sup> It should be noted, however, that there has not been full integration of court registers in Poland. This is due to the fact that the National Court Register only replaced previously existing registers. Registers created later were no longer integrated with it.<sup>142</sup>

The National Court Register derived from the idea of restoring to Polish law an institution equivalent to the Merchant Register, known from the Commercial Code and German legislation. This intention was not implemented, however, as the rule ultimately applied to the National Court Register was that only larger business activities were to be registered therein (similarly to the German register). Despite initial assumptions, sole proprietorships are registered in an

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<sup>140</sup> Z. Kukula, *Rejestry publiczne jako źródło weryfikacji informacji o przestępstwach gospodarczych*, Kontrola Państwowa, year LII, Issue 4 (315), 2007, p. 27.

<sup>141</sup> Siedziby i obszary właściwości Wydziałów Gospodarczych KRS – Stan na 24.12.2020 do pobrania z Siedziby i obszary właściwości Wydziałów Gospodarczych KRS, On-line <https://www.gov.pl/web/sprawiedliwosc/siedziby-i-obszary-wlasciwosci-wydzialow-gospodarczych-kr> (accessed 9 October 2021).

<sup>142</sup> T. Stawecki, *op. cit.*, p. 273.

administrative register, i.e. the Central Business Activity Register (*Centralna Ewidencja i Informacja o Działalności Gospodarczej*).<sup>143</sup>

It is also worth mentioning that since the 19th century, the most common practice with regard to keeping registers has been to make entries in the register and to collect the documents on which they are based in the register files, assuming that their content is not the subject of the entry, and the authority keeps them in the files due to the principle of openness. This principle was adopted both in commercial and cooperative registers, introduced in Poland in the first half of the 20th century, and in the National Court Register.<sup>144</sup>

As we can see, the commercial and cooperative registers, as well as the National Court Register, which is now replacing them, are derivatives of German legislation, which was the basis of solutions carried out in Poland in the interwar period, and transferred to subsequent legal acts in force during the Polish People's Republic and the Third Republic of Poland. Even the fundamental change in form caused by the digitisation of registers did not result in abandoning the hitherto binding principles. On the contrary, it allowed them to reach their full usefulness in the practice of court registration.

Summarising the considerations contained in the above chapter, it should be noted that Prussian registers and legal solutions for public registration applied in the Kingdom of Prussia laid the foundations for public registration carried out in Poland. This has been the case for all the most important public registers kept until now. Of course, these registers have never been a carbon copy of Prussian solutions, also using the examples of other partitioned states and solutions applied in the world, such as Switzerland, Belgium or France.<sup>145</sup> Nevertheless, the Prussian heritage is visible throughout the development of the described registers from the moment Poland regained its independence until now. Importantly, also the digitisation of the registers did not become the basis for changing the principles guiding them, changing their physical form but not the principles of functioning.

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<sup>143</sup> Ibidem, p. 271.

<sup>144</sup> H. Ciechanowski, *Od rejestrów pruskich do KRS – ewolucja rejestracji sądowej w Polsce w XX i XXI w.*, In: *Belliculum diplomaticum VIII Thorunense. Dokumentacja i materiały archiwalne instytucji wymiaru sprawiedliwości – problemy wyzwania, perspektywy*, ed. K. Kopiński, Toruń 2022, p. 90.

<sup>145</sup> T. Stawecki, op. cit., p. 181.

## *Conclusion*

The idea of this monograph was to present the public registers functioning in the Prussian Kingdom from a systemic perspective and to trace their influence on the development of public registers in Poland from the end of World War 1 until now. Although the individual public registers were relatively well developed in the literature to date, there was a lack of approaches that attempted to discern the relationships between them. This is also the task faced by this monograph.

Following the examination, it can be argued that the public registers kept in Prussia, and more generally in the German Empire, had a very modern shape by the end of the 19th century. This was largely due to the secularisation of public administration and the judiciary. The formation of a professional civil servant corps, responsible also for drafting new laws, resulted not only in their high quality but also in professionalism in their application. The situation was similar in the case of public registers, which is perfectly clear from the example of marital status registration, which – as indicated above – only in the western lands of the Republic was of a high standard and had a high percentage of registrations.

Moreover, Prussian registers, like those of today, were divided into administrative registers, which were kept by the administrative authorities (registry offices, cadastral offices and the Patent Office in Berlin), and court registers, which were kept by the courts of first instance.

There are also numerous links between the public registers, concentrated in three areas: the circulation of information between the registers, the partially common legal basis for their operation, and the purpose behind their keeping. Undeniably, the Prussian registers, although still somewhat separate from the registers of each institution, were a system in the modern sense of the word.

During the preparation of this monograph, an extensive archival search was carried out to examine to what extent the system of public registers introduced in Prussia was stable. In this case, stability was understood as homogeneity,



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i.e. whether there were no fundamental differences in the keeping of registers in the individual provinces of the state. The analysis of the archives covered materials stored in the state archives in Bydgoszcz, Gdańsk, Koszalin, Olsztyn, Poznań, Szczecin, Toruń, Wrocław and the The Brandenburg Main State Archive in Potsdam. On the basis of these queries, it can be stated with certainty that public registers in the Kingdom of Prussia were kept in a uniform manner. The occurrence of changes in the law also made it possible, in most cases, to use older forms of registers, even while newer laws were in force. Therefore, it can be said that these registers were backward compatible. An excellent example of this is land registers, in whose records one can often find evidence of the use of tables of previously kept mortgage books. Similarly, in the case of cadastral records kept over many years, their newer forms were successfully combined with older ones without suffering informational damage or losing their current usefulness. Similar stability can be observed in the case of all types of public registers examined. In spite of the fact that the search covered registers kept in different courts and offices located on the territory of different regions, which as supervisory bodies had the ability to influence the functioning of individual offices, no deviations from generally applicable rules were observed. Moreover, in the case of recommendations and interpretations sent by the regency, concerning the problems reported by officials, one can see the care for the maintenance of uniformity consistent with those in force in the rest of the Kingdom of Prussia. Certainly, this achieved stability is a great achievement for Prussia and the German Reich more broadly. At the same time, such homogeneous record keeping must have had a positive impact on their reliability, as the well-established patterns and procedures created far fewer chances of falsification of recorded data.

Whereas the reborn Republic of Poland maintained the district character of law, forced by the functioning of completely different legal systems in its particular parts, which made their immediate unification impossible, the Prussian registers survived in Poland until the outbreak of World War II. Successive Polish governments, together with the Codification Commission, recognised the high quality and usefulness of the institutions introduced in Germany. As a result, attempts were made to transfer them to Poland, or they became the basis for subsequent projects created by the Commission.

Although, in general, these ideas were not put into practice, the exception being the Commercial Code, their importance for the development of Polish law cannot be overestimated. This is primarily due to the fact that the laws enacted by the Polish authorities after World War II were in many cases based on projects developed in the interwar period. Suffice to mention here marital status registers

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or land and mortgage registers. Through them, the Prussian models were transferred to the post-war Polish law and in many cases maintained to this day.

Subsequent drafts and amendments enacted in the 20th century did not introduce profound changes to the existing legislation. Therefore, they did not change the foundations and principles guiding the operation of individual registers. In this way, these principles were also incorporated by the Third Republic, which, despite the declared separation from the People's Republic of Poland as a non-sovereign state under Russian dictate, in the legal sphere remained in many cases faithful to its heritage.

Recent years, especially the 21st century, have featured intensive digitisation of public registers. Many of them have been merged into common systems such as the National Court Register and the State Register System. However, generally the principles guiding them, established back in the 19th century, have not been violated. Only the form in which they are kept has been changed. What is important, although they constitute a uniform database, due to the fact that it can be accessed in specific courts or – as in the case of marital status registers – in municipal offices, they have not been fully de-territorialised. However, the exchange of information between them has been significantly accelerated and facilitated, which, compared to the 19th and 20th centuries, is a significant step towards modernity and systematic nature.

Thus, when looking at the development of public registers in the discussed period, i.e. from the 19th to the 21st century, the influence of Prussian registers on the development of public registers in Poland is indisputable. This influence is visible in the case of all the most important registers kept today. At the same time, however, it should be stressed that these were not the only models drawn from the Polish legislation. Analysing the solutions used in this period, one can notice the influence of the legal systems of Russia, Switzerland or the Netherlands.

It is also worth noting that German models in the field of civil law have been used by legal systems in various parts of the world. This influence can be seen, inter alia, in Greece, Italy, Brazil, Mexico, Peru, Thailand, China and Japan.<sup>1</sup> Therefore, Poland is not an exception, but it is of the countries which, recognising the value of German law, have drawn on its models in creating and developing their own modern legal systems.

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<sup>1</sup> K. Sójka-Zielińska, *Historia prawa*, Warszawa 2003, p. 245.

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## *Streszczenie/Summary*

Rejestry publiczne, w różnej formie, towarzyszą ludzkości od starożytności. Pierwotnie ich prowadzenie było związane przede wszystkim z koniecznością rejestrowania faktów dotyczących własności nieruchomości. Z czasem jednak, wraz z rozwojem stosunków prawnych, konieczne stawało się wprowadzanie nowych ksiąg/ewidencji/rejestrów zbierających informacje na temat obywateli i ich działalności oraz praw. „Dojrzałą” formę rejestry publiczne osiągnęły jednak dopiero na przestrzeni XIX wieku, w znacznej mierze dzięki rozwiązaniom prawnym stosowanym na terenie Królestwa Pruskiego i szerzej Rzeszy Niemieckiej. Rozwiązania te, ze względu na swoją przydatność i wysoką jakość, stały się także podstawą rozwiązań stosowanych w wielu krajach na całym świecie.

Z ustawodawstwa pruskiego czerpała także odrodzona pod I wojnie światowej Polska, tworząca własny porządek prawny. Po II wojnie światowej rozwiązania te zostały włączone do prawodawstwa PRL. W tym czasie, na przestrzeni XX i XXI wieku, ulegały one niekiedy znacznym przemianom (także technicznym). Wciąż jednak we współczesnych polskich rejestrach publicznych można dostrzec ich pruską podstawę.

Należy podkreślić także to, że rejestry historyczne, nieprzydatne już do bieżącej działalności administracyjnej, włączone do zasobów poszczególnych archiwów, wciąż mają ogromne znaczenie dla ludności. Przykładem są m.in. rejestry stanu cywilnego czy księgi gruntowe, wykorzystywane zarówno w badaniach genealogicznych, jak i w postępowaniach przed sądami i organami administracji.

Dostrzegając historyczne i archiwalne znaczenie rejestrów publicznych, przedmiotem niniejszej monografii stał się system rejestrów publicznych w Królestwie Pruskim. W książce zostały przedstawione poszczególne rejestry będące elementami systemu, jak również występujące pomiędzy nimi powiązania. Następnie opisano problem czerpania przez ustawodawstwo polskie z rozwiązań pruskich oraz zmiany, jakie zaszły w tym zakresie na przestrzeni XX i XXI wieku.

Monografię podzielono na trzy części. Pierwsza część przedstawia rejestry publiczne o charakterze administracyjnym. Należą do nich: rejestry stanu cywilnego (rozdział 2), kataster (rozdział 3) oraz rejestry prowadzone przez Urząd Patentowy w Berlinie – rejestr wzorów użytkowych, rejestr patentów oraz rejestr znaków towarowych (rozdział 4).

W drugiej części zostały przedstawione rejestry prowadzone przez sądy. Nieco wbrew doktrynie pruskiej, ale zgodnie ze współczesnymi poglądami, w pierwszym rozdziale tej części (rozdział 5) opisano księgi gruntowe (odpowiednik dzisiejszych ksiąg wieczystych). Następnie ukazano rejestr handlowy oraz jego pochodne, tzn. rejestr spółdzielni, stowarzyszeń i spółdzielni wodnych (rozdział 6). Dalej przeanalizowano rejestry statków morskich oraz żeglugi śródlądowej (rozdział 7). W ostatnim rozdziale tej części opisano inne, mniejsze rejestry, tzn. rejestr wzorów, rejestr małżeńskich praw majątkowych oraz rejestr giełdowy (rozdział 8).

Ostatnia część monografii została poświęcona przedstawieniu relacji występujących pomiędzy poszczególnymi rejestrami publicznymi (rozdział 9) oraz ich wpływowi na rejestry publiczne w Polsce (rozdział 10).

