



**Vilniaus
universitetas**

Insight into the Lithuanian hypothecary system

Assoc. prof. dr. Laurynas Didžiulis

Lithuanian property law

- Lithuania
 - Civil law jurisdiction heavily relying on Roman law and close to French legal tradition
 - Member of EU (from 2004)
- Main sources
 - Constitution (1992)
 - ECHR, EU law (e.g. Financial collateral directive, Mortgage credit directive)
 - LCC (2000) Book Four
 - Public law on real estate (approx. 300 legal acts)
 - Case law (civil and administrative)
- LCC Art. 4.38 – property are things and ,other assets‘

Numerus clausus

A. Ownership

- Private ownership
- Public ownership

B. Limited property rights *in re aliena*

- Use rights
 - Servitude
 - Usufruct
 - Emphyteusis
 - Superficies
- Security rights
 - **Hypotec**
 - Charge on movables, including pledge
 - Right of retention



Hypothec as property right

- Hypothec is a non-possessory security right over immovables (LCC Art. 4.170)
 - Limited property right not conditional title (functional equivalent to common law charge on land, not mortgage)
- Liberal creation and enforcement on basis of *actes authentiques*
 - Perfection in public registry
 - Enforcement by bailiff or insolvency administrator
- Consensual or forced (e.g. fiscal)
- Object – immovables and accessory movables
 - Floating hypothec of enterprise
- Accessory
 - Limited possibility to create non-accessory hypothec

Legislative swings

- LCC 2000 – formal pro-debtor system
 - Notary, hypothecary judge and registration for creation, hypothecary judge for permission to enforce
 - No transactional freedom
 - Strict hypothecary deeds and no floating charge
 - Strictly accessory
 - High litigation
- Reform of 2012 – (over)flexible pro-creditor system
 - Elimination of hypothecary judges, only notarial act is needed *in personam*, but perfection to effect it *in rem*
 - *Transactional freedom*
 - *Elimination of formal hypothecary deeds*
 - *Floating charge*
 - *Limited possibility of non-accessory hypothec*
 - *Low litigation*
- Suppressed reform of 2022
 - Initial idea to eliminate notaries from creation, leaving consumer with a bank
 - Notaries were eliminated only from commercial charge of immovables

Problem of double hypothecation

- Creditors request double hypothecation
 - Hypothec on land
 - Hypothec on buildings
- Origins – mental separation of land from fixtures in socialist times
- Void transaction
 - Produces no legal effect
- Consumer pays
- Case law only in 2023 characterised buildings as parts of land