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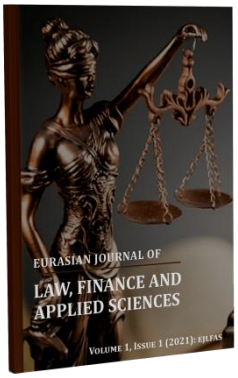

THE ROLE AND IMPORTANCE OF THE COLLATERAL REGISTRY IN THE IMPLEMENTATION OF COLLATERAL TRANSACTIONS

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ABSTRACT

The article analyzes the concept, value of the loan agreement and issues related to its application. The article also considers the expansion of the scope of the subject of the loan agreement and develops proposals to improve the legislation on debt.

The recognition and application of security agreements in securing the performance of obligations is not enough. Often, in cases where movable property is the subject of a security agreement, third parties do not have the opportunity to know that such property has become a means of security. This, in turn, can lead to the movable property being the subject of security going beyond the scope of the relationship between the creditor and the debtor, that is, being transferred to third parties. Therefore, it is important to record security agreements to a certain extent and to maintain a certain register of creditors and debtors under such agreements.

Tangible or intangible movable assets often constitute a significant portion of a company's capital stock. It is therefore important for jurisdictions to develop sufficiently strong secured transactions laws that allow borrowers and creditors to recognize movable assets as collateral, thereby supporting financing secured by such assets. While a regulatory framework is essential to any security transaction system, the effectiveness of security transaction law also requires an effective mechanism for registering interests in movable assets. The primary functions of security registries are to publicize interests in movable assets and to determine the priority of assets listed in the notice for secured creditors.

To reduce information problems associated with lending and increase the chances of repaying the loan, banks usually require collateral from borrowers [1]. For example, according to a World Bank survey of businesses in more than 100 countries, more than 75% of all loans require collateral [2]. Many theoretical models show that the presence of collateral is a mandatory constraint on financing and that this constraint is more effective in

[1]See Steijvers and Voordeckers (2009) for a recent survey of empirical studies on the use of collateral to mitigate credit rationing.
[2]Enterprise surveys are available at http://www.enterprisesurveys.org/

underdeveloped financial markets [3]. Experience shows that the lack of collateral is one of the main reasons why firms are denied bank loans [4].

Movable assets, unlike fixed assets such as land or buildings, often constitute a large part of the fixed capital of private firms and represent a particularly large share for micro, small and medium-sized enterprises. For example, in developing countries, 78% of the fixed capital of enterprises is typically made up of movable assets such as machinery, equipment or accounts receivable, while only 22% is real estate [5]. Thus, movable assets are the main type of collateral that companies, especially in developing countries, can offer as collateral for bank financing. However, banks in developing countries are usually reluctant to accept movable assets as collateral due to the lack of a legal and regulatory environment in which banks and firms can coexist [6]. From this perspective, movable assets become "dead capital" [7].

While a strong legal framework is needed to use movable property as collateral, movable property registries serve two main functions: to inform parties of the existence of security interests in movable property (existing liens) and to determine the priority of creditors over third parties [8]. Thus, without a well-functioning movable property registry, even the best security transaction laws may be ineffective or even useless.

Given the importance of movable asset pledge registries, such registries have been established in more than 40 countries over the past decade.

It should be noted that many countries around the world have established a registry of collateral transactions and assets used as collateral. For example, in Colombia, a new version of the Law on Collateral Lending was adopted in 2013, and a new centralized registry of collateral was created in 2014. This registry registered 445,000 loans, or $1 trillion in loans.

In China, the first reforms related to the registration of supply transactions were implemented in 2007, and in 2008 a register covering accounts receivable and leasing was introduced. 10.4 trillion dollars of debtor debt aimed at the development of small and medium business, factoring and leasing sectors is registered in the register.

In Ghana, a local network for large mining corporations was developed through local small and medium-sized business suppliers, using movable property as collateral, and an investment of $100 million was absorbed. In Vietnam, 2012 legal reforms and a new centralized online registry secured 675,000 transactions worth $27 billion. In Azerbaijan, a new draft law on supply transactions was adopted in 2017 and a registry was established.

Due to the fact that securing the fulfillment of obligations, in particular, collateral relations, is a multifaceted and complex institution, and their scope and scope of application are increasing, the number of movable property included in collateral relations is increasing, leaving the quality of the means of securing it at the discretion of the debtor. Therefore, the

[3] Liberty , Jose and Atif R. Mian , 2010. Collateral Spread and Financial Development. *Journal of Finance* 65(1), 147–177.
[4] Fleisig , Heywood, Mehnaz Safavian , Nuria de la Peña, 2006. *Reforming Collateral Laws to Expand Access to Finance.* World Bank. Washington DC.
[5] Alvarez de la Campa , Alejandro, 2011. Increasing Access to Credit through Reforming Secured Transactions in the MENA Region. Policy Research Working Paper 5613.
[6]For example, Safavian at al. (2006) claim that nearly 90 percent of movable property that could serve as collateral for a loan in the United States would likely be unacceptable to a lender in Nigeria.
[7] Fleisig , Heywood, Mehnaz Safavian , Nuria de la Peña, 2006. *Reforming Collateral Laws to Expand Access to Finance.* World Bank. Washington DC.
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role and significance of the new register "Pledge Register" in relation to the pledge of movable property and the determination of the civil legal regime of objects in this register are of particular relevance.

According to I.R. Rustambekov, "the creditor has the opportunity to choose the forms of securing his rights in the event of non-fulfillment of his obligations by the debtor, and in this case the creditor can choose one of the ways of directing the collection to the pledged property or protecting his obligations under the main obligation [9]. "

As V.L. Kharseeva writes, "the introduction of new rules in collateral relations to ensure the fulfillment of obligations, in particular, the introduction of an appropriate register for the pledge of movable property, will expand the scope of securing the interests of the creditor and provide the opportunity to take prompt action against a debtor who has not fulfilled or has not fulfilled his obligation properly [10]. "

In our opinion, the pledge based on the mechanism of leaving movable assets with the debtor-mortgagor should be based on the principle of "publicity" and such a pledge should be kept in a specific register. Such provision of protection creates a real opportunity to limit the circulation of the assets that are the subject of the securing agreement for the benefit of the creditor and to focus the collection on this asset when the debtor does not fulfill his obligations.

It should be emphasized that the pledge register serves not only to protect the rights of creditors under a security agreement, but also creates a basis for ensuring the interests of honest consumers. One of the violations of the rights and legitimate interests of subjects of civil relations due to non-fulfillment of contractual obligations occurs when fulfilling obligations secured by the pledge of valuable movable property, in particular, vehicles. The pledge of a vehicle serves as a method of ensuring the fulfillment of the debtor's obligations under a loan agreement and, thereby, serves as a guarantee of protecting the legitimate rights and interests of the creditor-mortgagee. At the same time, it is not uncommon for unscrupulous debtors-mortgagors to sell their pledged movable property without informing the buyer about the existing lien.

Judicial practice shows a constant increase in the number of civil cases in which the bank's claims are directed not against the borrower himself, who is the main debtor under the loan agreement, but against a third party who purchased the pledged movable property from the main debtor. The basis for the bank's filing such claims is Article 284 of the Criminal Code, which establishes that the right of pledge shall be effective in the event of the transfer of ownership of the pledged property from the pledgor to another person. Thus, failing to receive the loan amount from the borrower, the bank has the right to recover the pledged property, while making claims against the buyer, who did not know and should not have known that this movable property was pledged.

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[9] Rustambekov I. (2009). Sovremennye voprosy pravovogo regulirovaniya institute zaloga v Uzbekistane. Obzor zakonodatelstva Uzbekistana, (3-4), 27-30. izvlecheno ot https://inlibrary.uz/index.php/uzbek_law_review/article/view/14316

[10] Kharseeva V.L. Novoe v zalogovykh pravootnosheniax // Teoriya i praktika obshchestvennogo razvitiya. 2014. – No. 18. – S. 118-121.

the clear legal conflict between the legitimate rights and interests of banks (creditors) and buyers of mortgaged property , the courts always side with the banks and implement the methods of protecting civil rights provided for in current legislation in favor of the banks.

To support this conclusion, it is appropriate to cite the opinion of the appellate court, which considered the possibility of accepting the complaint of citizen N.S. Tuliev. According to the case files, the reason for the citizen's appeal to the court is the decision of the first instance court to satisfy the demands of the bank to recover the mortgaged property and to refuse to satisfy the claim of the citizen N.S. Tuliev to be recognized as a bona fide possessor.

The court found that a loan agreement was concluded between the bank and citizen A.A. Palvanov, and in order to ensure the fulfillment of obligations under this agreement, a vehicle pledge agreement was also concluded, and later this vehicle, belonging to the pledgor - debtor A.A. Palvanov, was sold to N.S. Tuliev.

Satisfying the plaintiff's claims for the recovery of pledged property, the court of first and second instance followed the provisions of Article 284 of the Criminal Code. As stated in the first part of this article, "the right of ownership of pledged property or the right to manage it on an economic basis shall remain in force if the pledgor transfers this property to another person as a result of the transfer of this property from the pledgor to another person with or without payment, or in the procedure of universal legal succession."

In this case, the citizen noted that this norm was incorrectly applied and insufficiently interpreted, and that it contradicted the Constitution and violated his rights and interests. Therefore, the citizen stated that the pledge agreement did not stipulate that the pledge would be preserved when the rights to the pledged property were transferred to another person, that he did not know about this and should not have known about it, and therefore it is groundless to pursue recovery of the pledged object against the new owner.

Having examined the submitted materials, the Court of Appeal found no grounds for satisfying this complaint and justified it with the following. Article 284 of the Civil Code, which provides for the preservation of the pledge when transferring the right to the pledged property to another person, is aimed at protecting the interests of the creditor under the obligation secured by the pledge and ensuring its proper performance. These rules are systematically interconnected with other norms of the Civil Code regulating pledge relations. In particular, the second part of Article 277 of the Civil Code states that, unless otherwise provided by law or contract and arising from the nature of the pledge, the pledgee has the right to alienate the pledged object with the consent of the pledgee, lease it or transfer it to another person for free use or otherwise dispose of it.

Regarding the issue of the unconstitutionality of Article 284 of the Civil Code, it can be noted that although the applicant stated that he was not informed about the existence of a “lien” in relation to the purchased property, in fact the seller violated the requirements of Article 393 of the Civil Code. This is because the seller has an obligation to transfer the goods to the buyer free from the rights of third parties, except in cases where the buyer agrees to accept goods encumbered by the rights of third parties.

Despite this conclusion of the court, it should be noted that the protection of the rights of buyers of pledged property is not supported by the current legislation, which negatively affects the property stability and protection of participants in civil transactions. Currently,

many citizens who purchase vehicles loaded with collateral are unable to use these vehicles without being notified of the presence of such cargo, since they are subject to collection in accordance with the requirements of the bank.

Protection of the rights and legal interests of buyers of mortgaged property is possible only in cases where there is a mechanism for informing interested parties about the existence of such a mortgage burden. This problem can be solved by officially recording the information about the existence of a collateral burden and providing all interested parties with collateral information reflected in a special register.

Currently, when using real estate as collateral, it is mandatory to specify such information. One of the essential principles of such collateral is to ensure its transparency, that is, to provide all interested parties with the opportunity to obtain information about the collateral.

At the same time, ensuring the transparency of mortgages on movable property can serve as an effective preventive method for protecting the rights of property buyers [11].

The issue of ensuring the transparency of pledges arose with the development of the institution of pledge in Roman law. Subsequently, various legal systems developed their own experiences in regulating the transparency of the list of pledged property, which can be ensured by transferring the property to the ownership of the pledgee, placing signs indicating the pledge of property, leaving the property with the pledger under the pledgee's seal, as well as registering the pledge.

However, it should be noted that the greatest freedom in the possession, use and even disposal of the pledged property is provided by the registration of the right to pledge. As for the pledge of movable property of high value, the use of ensuring the transparency of the pledge by imposing any restrictions on the rights to possess or use this property is not always economically justified. First of all, this applies to cases where the borrower has taken out a loan to purchase movable property secured by this property. In this case, it is obvious that the borrower receives the property not so that his rights to possess and use this property are limited until the full amount of the loan is repaid, but so that he can use this property.

However, the current legislation provides for the registration of the right to pledge only real estate. Such registration is traditionally called a mortgage. Despite the traditional understanding of mortgage in the legislation as a pledge of real estate, which implies mandatory state registration of the right to pledge, a study of the mortgage system, that is, the system of registration of pledge rights, shows that this system can be used to register the pledge of certain types of movable property.

From this point of view, Uzbekistan also adopted the Law No. ZURQ-356 “On the Pledge Register” on October 23, 2013. The introduction of the Pledge Register is aimed at ensuring the interests of creditors and increasing the interest of debtors in the proper fulfillment of their obligations. The Pledge Register, as stated in the second paragraph of Article 3 of the Law, is a single information database that reflects the following information:

[11] Milokhova A.V. Obespechenie publichnosti zaloga dvizhimogo imushchestva kak sposob zashchity grajdanskih prav // https://cyberleninka.ru/article/n/obespechenie-publichnosti-zaloga-dvizhimogo-imushchestva-kak-sposob-zaschity-grazhdanskih-prav-1

1) the rights of the creditor to property or property rights (lease) provided as security for the performance of an obligation;

2) the rights of the debtor in relation to the property given as collateral and the established restrictions on their implementation;

3) other requirements related to the debtor's proper performance of his obligation.

The inclusion of this information in the register, in turn, serves to protect the rights and interests of other participants in civil transactions, including the creditor, in particular other persons wishing to conclude a transaction with the pledged property. Since a person who has such information will have the opportunity to make a correct and reasonable decision on the issue of entering into civil legal relations with the debtor, who is the owner of the pledged property.

It is worth noting that this law has formed specific definitions from the point of view of the pledge registry for terms such as “creditor” and “debtor”, which are traditional concepts for civil law. In particular, this law, unlike the traditional definition in civil law doctrine, defines a creditor as a person who has the right to preferential satisfaction of his claims at the expense of property or lease rights provided as a means of security, while the definition given to the debtor also states that he is the person who caused the creditor to exercise his preferential right in satisfying his claims. Without going into the analysis of these concepts in depth, it is important to note that in the third paragraph of Article 3 of Law No. ZUR-356 “On the Pledge Registry”, it can be seen that the word “or” has been omitted from the phrase “the debtor’s property and land plot”. However, in the definition of the debtor in the next, fourth paragraph of this article, the word “or” is included in this phrase, and it is expressed correctly from the point of view of logic, law and Uzbek language word construction. Therefore, it is appropriate to correct the third paragraph of Article 3 of Law No. ZUR-356 “On the Pledge Register”.

this law also clearly defines the issue of who are the keepers of the pledge register and its users . Because it is through these persons that it will be possible to ensure the openness and transparency of information on the pledge of movable property and thus ensure the stability of civil transactions. According to the second part of Article 4 of the Law, “the maintenance of the pledge register shall be entrusted to the organization maintaining the pledge register established under the Central Bank of the Republic of Uzbekistan” . In accordance with paragraph 5 of the Regulation [12]“On the Procedure for Maintaining the Pledge Register” annexed to [13]the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 155 dated June 12, 2014, HYPERLINK "https://kadrovik.uz/ru/doc?id=335204_o%E2%80%98zbekiston_respublikasi_vazirlar_mahkamasining_12_06_2014_y_155-son_garov_reestri_to%E2%80%98g%E2%80%98risidagi_o%E2%80%98zbekiston_respublikasi_qonunini_amalga_oshirish_chora-tadbirlari_haqidagi_qarori&prodid=1_vse_zakonodatelstvo_uzbekistana" \t "_blank" the maintenance of the pledge register is carried out by the State Unitary Enterprise “Pledge Register” under the Central Bank (hereinafter referred to as the SUE). According to the SUE,

[12]https://lex.uz/docs/2258572?otherlang=1
[13] https :// lex . en / docs /2410429

"in 2023, the number of users of the pledge register increased by 383 and as of January 1, 2024 amounted to 1,279. The number of new records on users' rights to mortgaged property exceeded 593 thousand, while commercial banks submitted about 131 thousand mortgaged property to the automated system "Notary" through the mortgage registry website and received information on the status of more than 80 thousand properties (presence of a ban or not). As of January 1, 2024, the total number of active records in the mortgage registry database amounted to 1,564.4 thousand, and more than 79.6 thousand changes were made to existing records in 2023. Also, users were provided with about 50 thousand extracts from the mortgage registry on records, and more than 224 thousand records were removed from the mortgage registry [14].

The fifth part of Article 3 of the Law stipulates who can be users. According to it, the following are users of the pledge register:

1) legal entities and individuals participating as creditors, debtors, who have the right to make entries in the pledge register on the basis of an agreement concluded with the organization maintaining the pledge register;

2) investigative and inquiry bodies, state tax and customs service bodies, which have the right to dispose of and restrict the use of property or land plots in accordance with the law.

"All persons have the right to search records from the mortgage register without restrictions" (Clause 3 of the Regulation). This provision ensures open and transparent collateral registry and the increase in the number of users of this system and the use of this system by those who apply security agreements will serve to ensure the stability of civil transactions in the future and ensure the rights and interests of its participants.

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6. For example, Safavian at al. (2006) claim that nearly 90 percent of movable property that could serve as collateral for a loan in the United States would likely be unacceptable to a lender in Nigeria.
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