

Presented at the FIG Congress 2018,  
May 6-11, 2018 in Istanbul, Turkey

# Protection of the property right in Poland

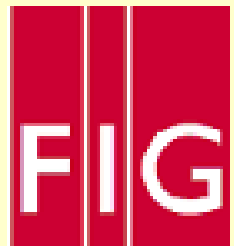
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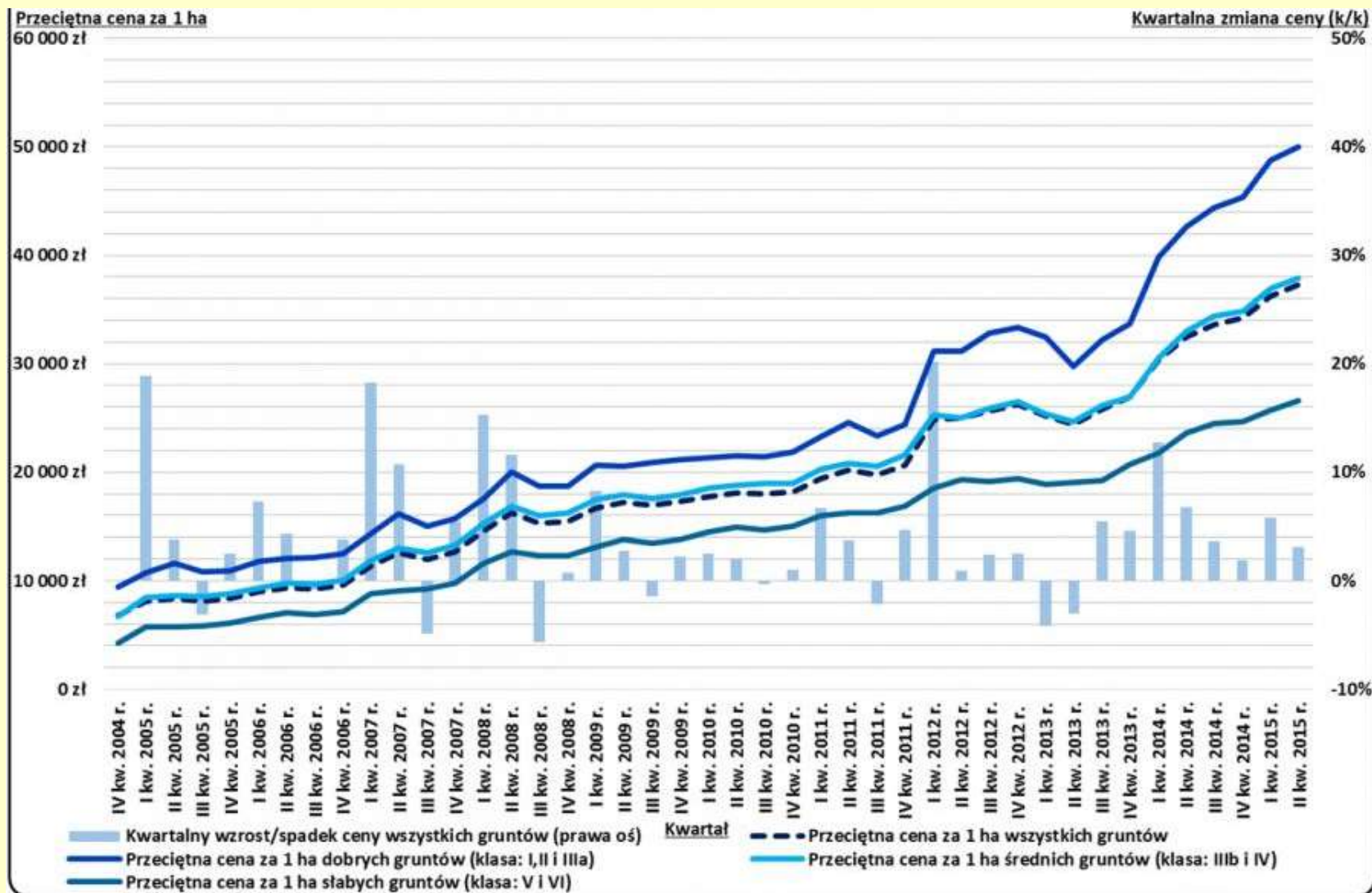
Istanbul, Turkey 6 – 11 May 2018



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# Changes of agricultural real estate values in Poland in the period 2004-2015



**Real estate**

# Legal acts of the protection of the property right

Protection of the property right is ensured:

- ❑ **Polish Constitution.** Its Article 21 says: "*The Republic of Poland protects property and the right of inheritance*" and that "*Expropriation is permitted only when it is caused by public objectives*".
- ❑ **Civil Code (KC)** - a real estate is defined in a legal act which regulates civil- and-legal relations between individuals and legal entities;
- ❑ **Act on mortgage and property registers (KWH)**
- ❑ **Act on real estate management (GN)** which determines rules of management of real estates being the property of the State Treasury or local governments.

## Definition of the real estate

**KC** - a real estate is a part of the Earth's surface being a separate subject of property (lands), as well as fixed buildings connected with lands or parts of such buildings, if - according to separate, detailed regulations - they are a separate property subject, independently on lands

**KWH** - a real estate is a part of the Earth's surface for which a property register has been created

**GN** – a real estate as lands with other elements, excluding buildings and premises, if they are a separate property subject.

**In both cases a separate property subject means** the case when buildings are the property of a perpetual land user (buildings constructed on lands of the **State Treasury (SP)** or **local government units (JST)**, which were passed for perpetual usufruct of the owner of buildings (usually for 99 years).

# Cadastral System

## Cadastral system tasks

According to the Law of Geodesy and Cartography the cadastre is used for:

- economic planning
- spatial planning,
- calculation of taxes and benefits,
- marking real estates in land and mortgage registers,
- public statistics,
- real estate management
- register of farms.

# CADASTRAL SYSTEM

## LANDS



- their locations,
- boundaries,
  - areas,
- land use types,
  - soil classes,
- marking real estates or sets of documents,

## BUILDINGS



- their locations,
- destination,
- useful functions,
- general technical specifications.

## PREMISES



- their locations,
- useful functions,
  - areas



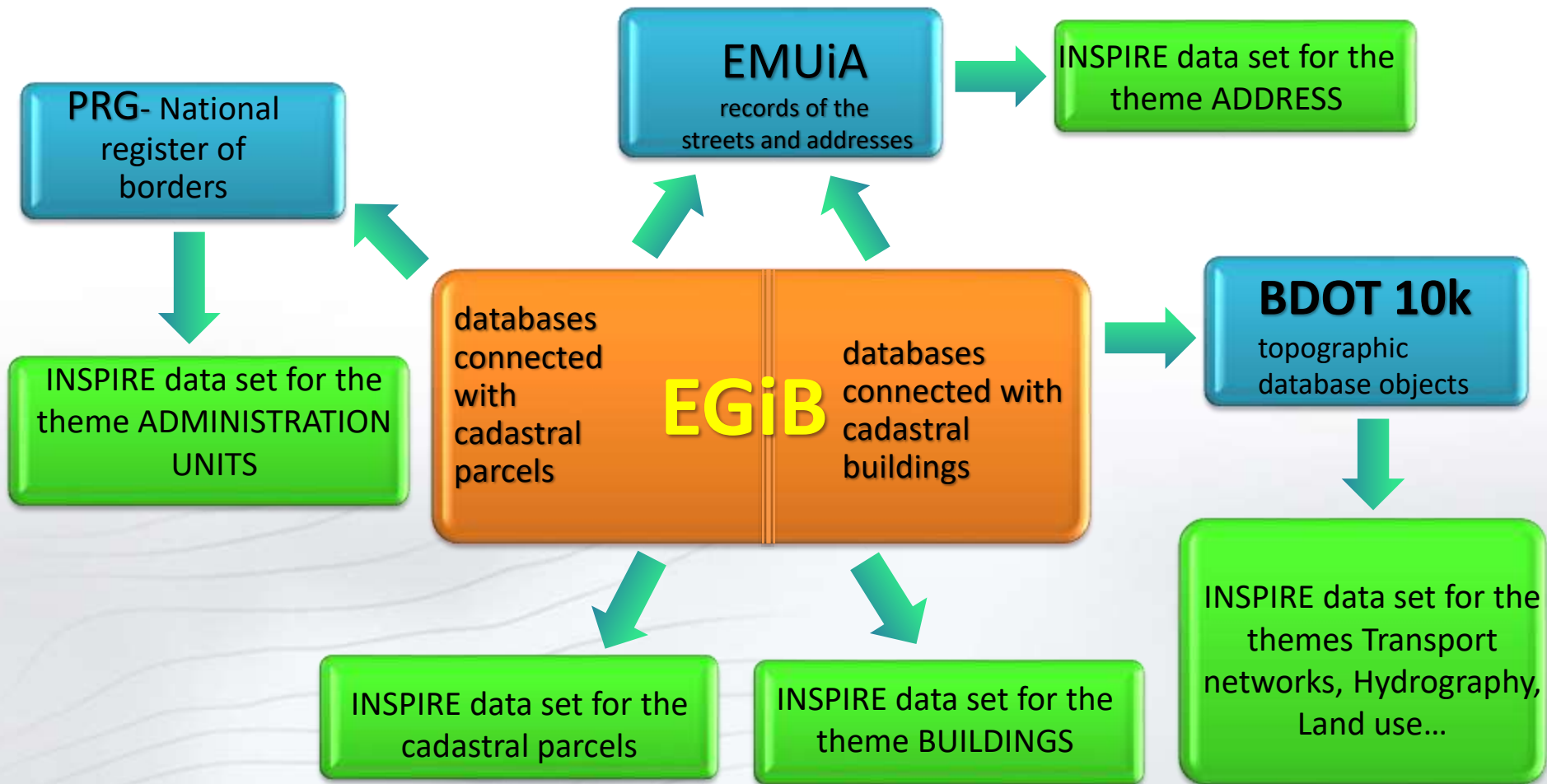
# Cadastral System

**lands** - their locations, boundaries, areas, land use types and soil classes, marking real estates or sets of documents, if they have been created for a real estate which includes lands;

**buildings** - their locations, destination, useful functions and general technical specifications;

**premises** - their locations, useful functions and areas.

# The Role of Land and buildings register (cadastre) in the national spatial information infrastructure - IIP



## Land and buildings register (cadastre) - administration bodies

The land and buildings registers are maintained in Poland by **438** administration bodies, including:

- ❑ **378 starosts** (heads) of districts and mayors of cities with rights of districts,
- ❑ **60 mayors or presidents** of cities.

Based on the same legal acts but partly they are maintained not in uniform way

## Definition of the cadastral parcel

A cadastral parcel is defined in the **Ordnance on land and buildings register (EGiB)** and it is a:

*continuous piece of land located within one cadastral district, uniform with respect to the legal perspective, distinguished by parcel lines from its surroundings.*

**Cadastral parcels (and the address point)** are the basic spatial reference object for public registers.

-these both objects have been legally defined in the Law of Geodesy and Cartography, being the basic legal act in the field of geodesy and cartography.

*such regulations existing in the legal acts stress the high importance of geodesy and cartography, increase professional prestige of surveyors and cartographers*

**boundary marks - boundary protection**

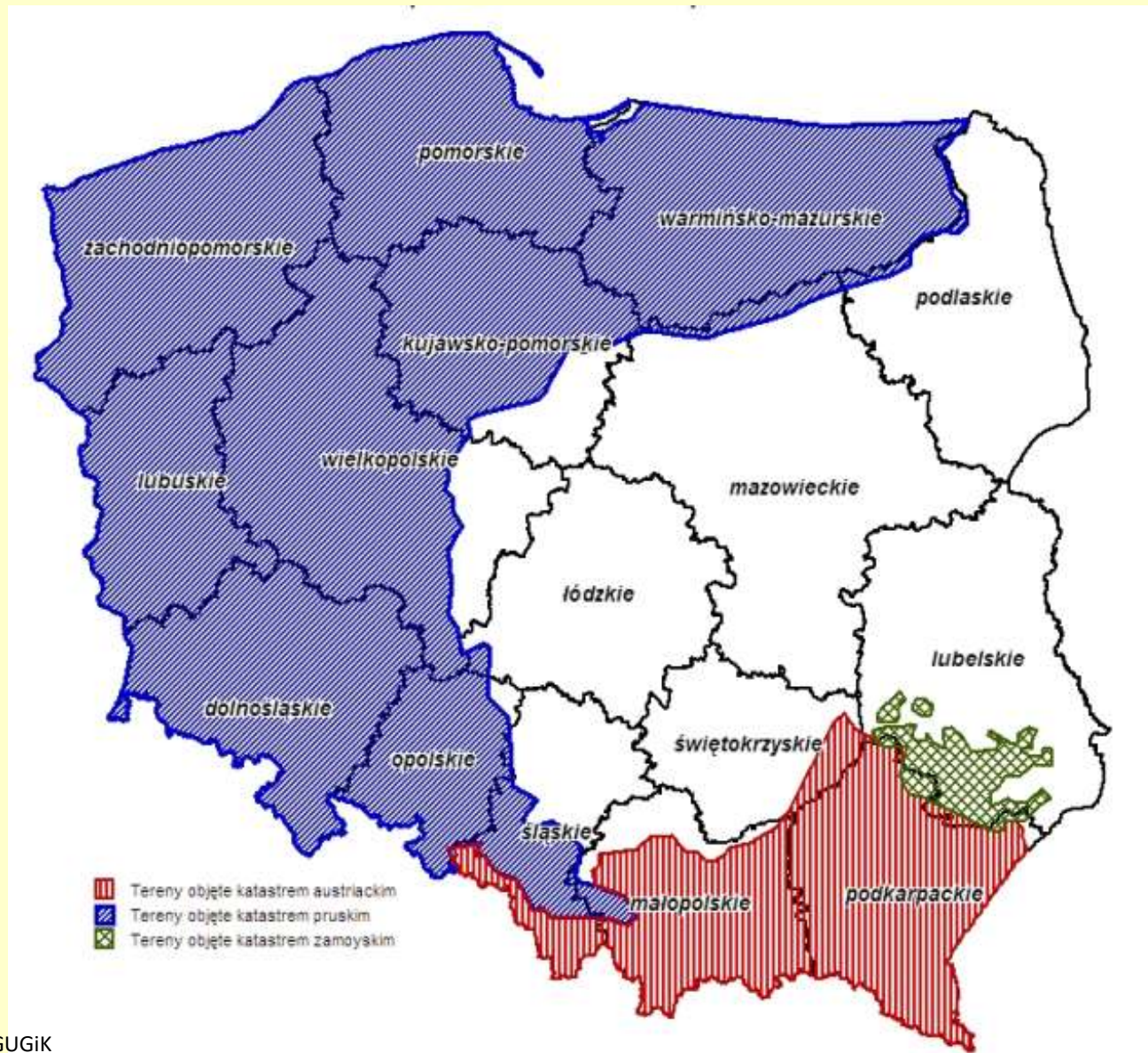
## BORDER MARKS



The Penal Code Art. 277  
*„who destroys, deletes, displaces  
or make border marks invisible or  
places them falsely, may be liable  
to fines, limitation of freedom  
or subject to imprisonment for up  
to two years”*



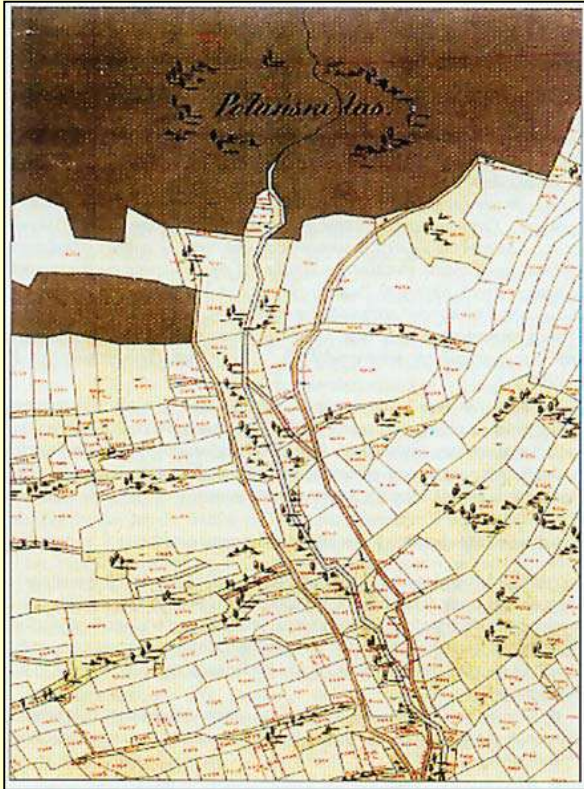
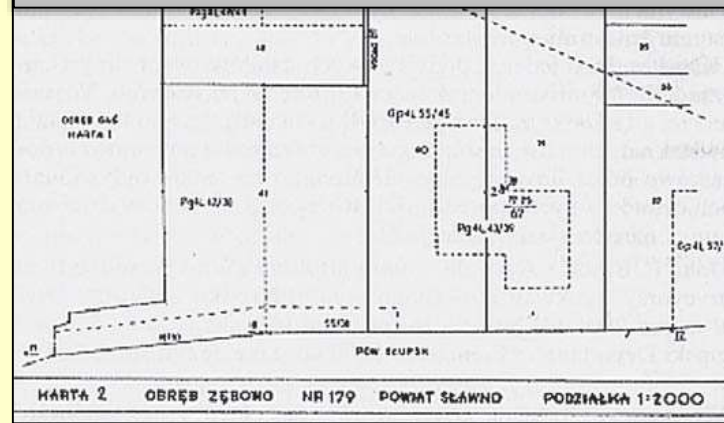
# Cadastral maps in Poland after annexation





# Cadastral maps in Poland after annexation

Cadastral map after Prussian annexation



Cadastral map after Austrian annexation



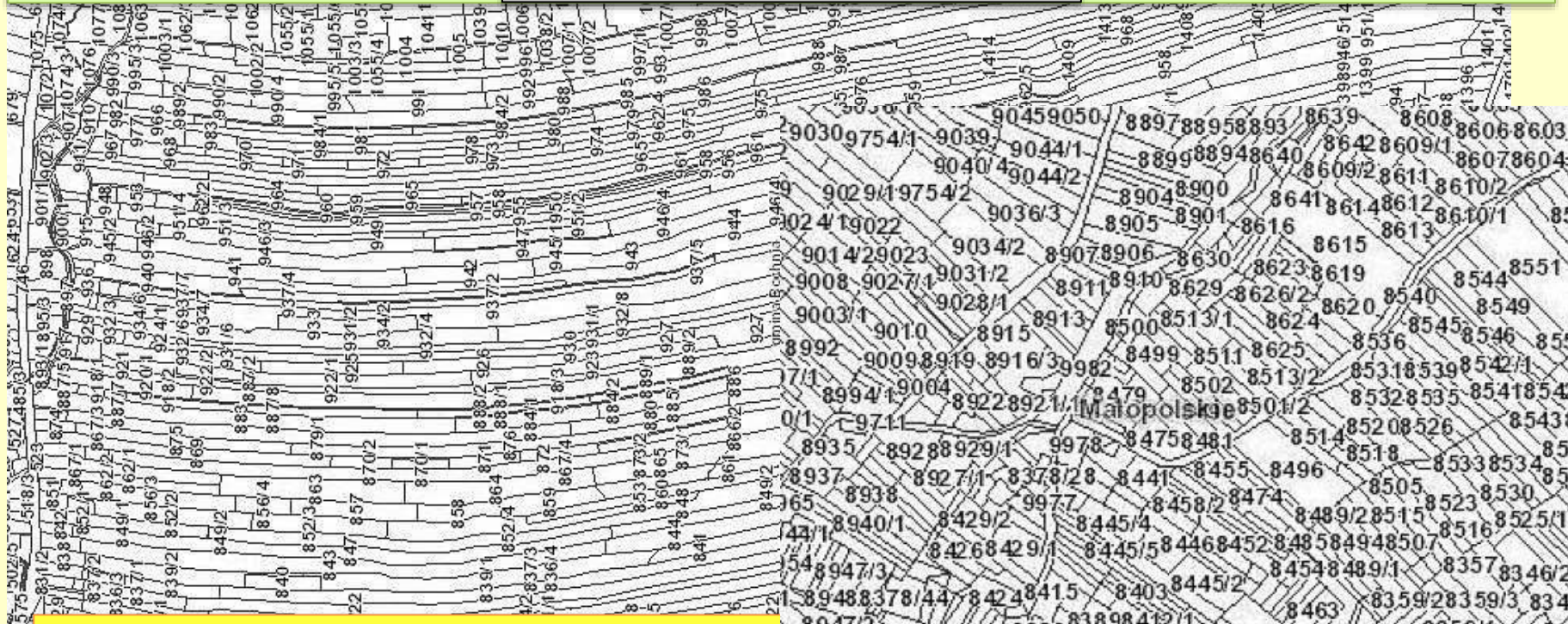
Cadastral map after russian annexation



# Boundary for marking – austrian cadastre in Poland

distance about **2,5 km**, width about **15-20 m**

Map from Austrian cadastre



**There is no obligation for marking boundary**

If the boundaries would be marked on the ground as the stones -  
will be no place for agriculture

## Protection of the real estate borders - acts

Protection of real estate borders results from legal acts:

- ❑ act of June 6, 1997 - The **Penal Code** (KK)
- ❑ act of April 23, 1964 - The **Civil Code** (KC)
- ❑ act of May 17, 1989 - The **Law of Geodesy and Cartography** (PGiK).

## Protection of the real estate borders – Penal Code

Protection of real estate borders results from legal acts:

The **Penal Code** is much more restrictive in the field of protection of border marks.

Its Art. 277 says:

*who destroys, deletes, displaces or make border marks invisible or places them falsely, may be liable to fines, limitation of freedom or subject to imprisonment for up to two years*

**Civil Code** specifies that

- ❑ **owners** of adjacent lands **are obliged to cooperate** in the course of delimitation of lands and maintenance of stable border marks.
- ❑ **Costs** of delimitation, as well as costs of **establishment and maintenance** of stable border marks are covered by the land owners in equal parts

- ❑ Real estate owners **which border marks have been moved, damaged or destroyed may renew them** if documents which allow for specification of their primary locations exist.
- ❑ **Renewal of marks** is performed after an application submitted by interested parties.

## Delimitation real estate

Real estate owners may also delimit real estates if borders, including positions of their border marks, have become disputed.

### Delimitation is performed according to:

- administrative procedures by a mayor/president who represents a municipality/city
- in the case of lack of the positive, final settlement of the administrative procedure, it is **transferred to the appropriate court.**
- Then the dispute concerning borders is **settled by the Common Court.**

### Determination of location of borders of cadastral parcels

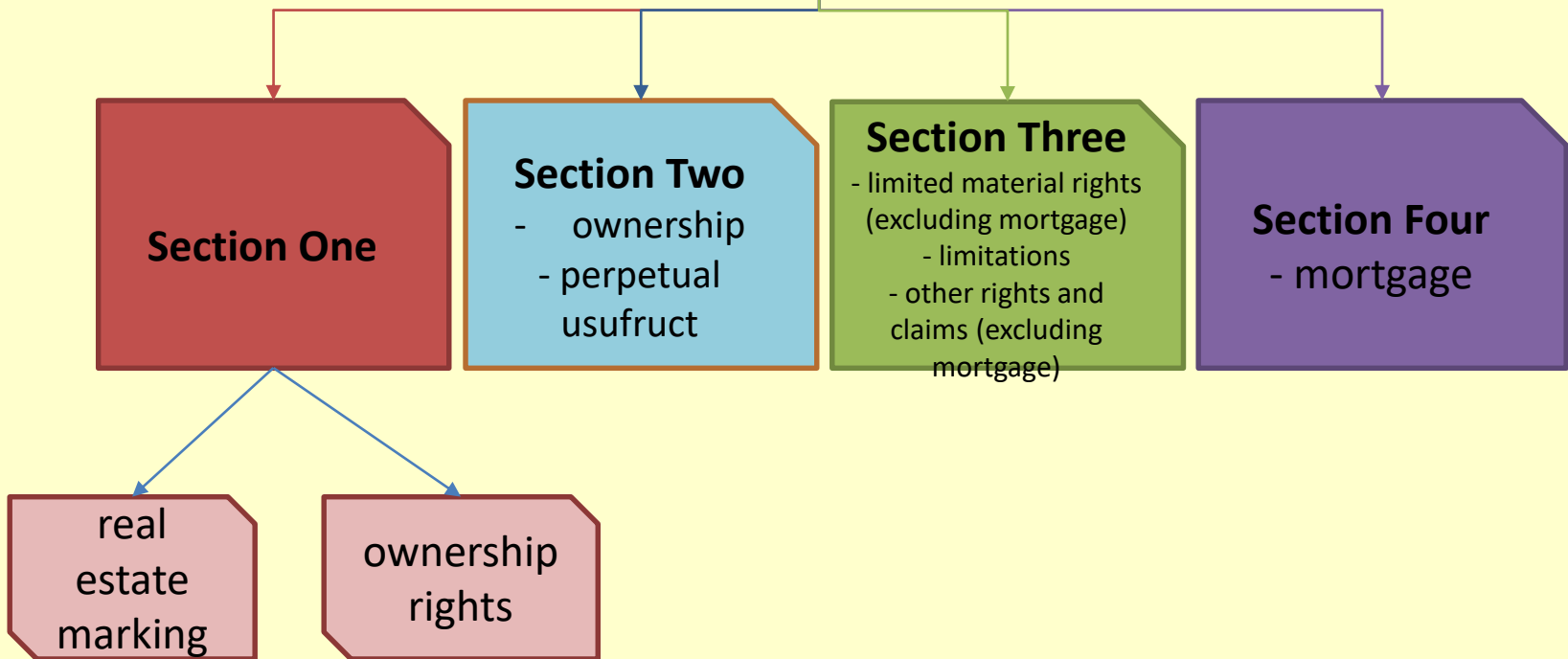
- ❑ In the case when reliable **data concerning borders is missing in the land and buildings register**
- ❑ **the owner may apply to the Starost** to use that procedure, which will be finalised by development of a protocol between the parties.

Such operations are also initiated by surveyors who perform procedures related to real estate borders (such as real estate divisions), as well as by public administration units, according to procedures related to modernisation of documentation of the land and buildings register



## **Land and mortgage registers**

# LAND AND MORTGAGE REGISTERS In Poland



# Land and mortgage register vs real estate cadastre

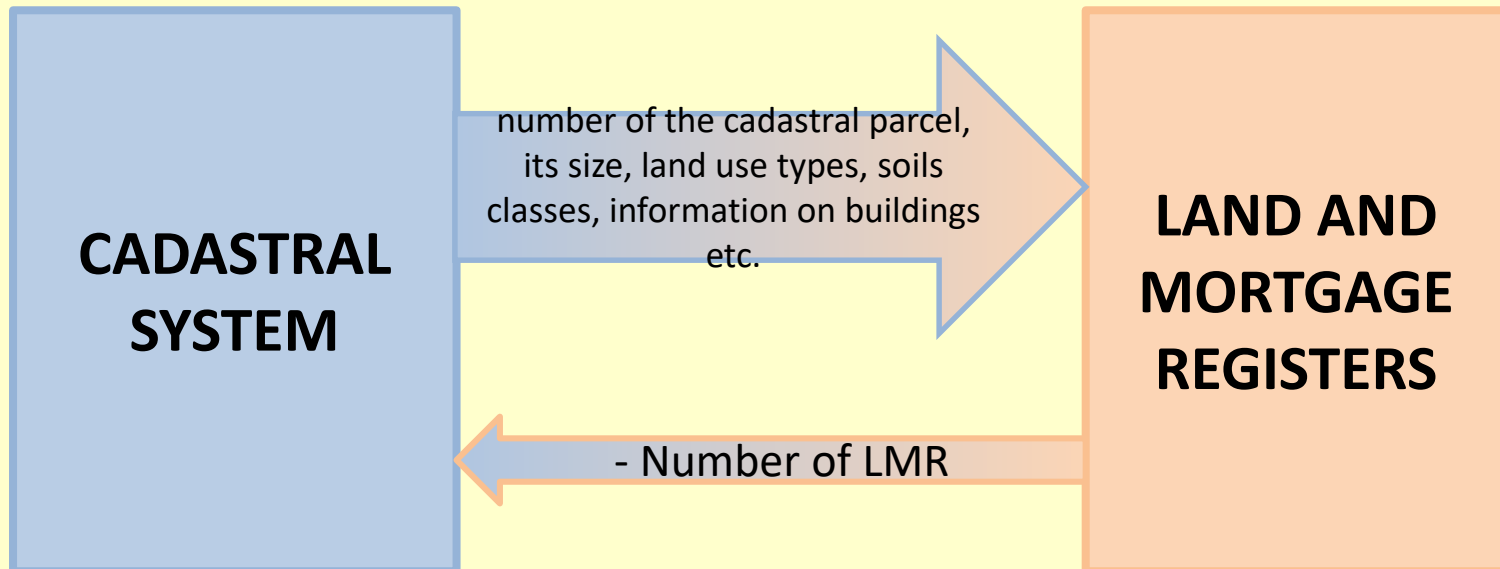
**Land and mortgage registers** record property rights

**Real estate cadastre registers** physical properties of cadastral objects, such as:

- lands
- buildings
- Premises

# SYNCHRONIZATION BETWEEN

- CADASTRAL SYSTEM
- LAND AND MORTGAGE REGISTERS SYSTEM



Both systems are mutually related.

## Land and mortgage register since 2014

- ❑ **Since 2014** all land and mortgage registers are registered in the **central database** being the **national set of land and mortgage registers** maintained with the use of an IT system.
- ❑ Information from the central database is **distributed by the Central Information of Land and Mortgage Registers** by means of an information system.
- ❑ **Everyone who knows the number of the property register may review the register**
- ❑ **Land and mortgage registers are open.**  
They are maintained for real estate, their maintenance is the responsibility of **regional courts**

## warranty of public faith of land and mortgage registers

The rule concerning the warranty of public faith of land and mortgage registers is important for ensuring the safety of legal proceedings.

This rule says that *in the case of discrepancies between the legal status of a real estate disclosed in the land and mortgage register and the real legal status, **the content of the register decides for the benefit** of a party which gained the property or another material right by legal operations performed with an eligible party*

## The ZSIN system it to ensure:

- **maintenance** of the central repository of backup files with land and buildings register data;
- **monitoring** - at the national and voivodship levels - the coherence and the quality of land and buildings register data;
- **data exchange** in the form of electronic documents, between the land and buildings register and other public registers;
- **verification of the compliance** of land and buildings register data with data included in property registers and other public registers;
- **dissemination** of integrated land and buildings register data to administrative bodies, among others for the needs of economic planning, spatial planning, the environment, for fiscal purposes, for state inspections, fighting against corruption and internal security.

# Conclusions

Mechanisms of property rights protection existing in Poland are included in several legal acts. They guarantee both, the stability of rights and borders of those rights. However, many unregulated cases, which are mainly events from the past, still exist.

## The most important include:

- ◆ **conditions of borders** in Poland require many operations concerning modernisation of the cadastre. Many borders which determine the extension of rights granted by land ownership acts or by acts of granting, do not meet the accuracy requirements of current regulations. This requires time and covering high financial inputs.
- ◆ **required stabilisation of borders** in many places, in particular in the area of the past Austrian cadastre, is not possible before land consolidation works which will improve sizes, shapes and the structure of parcels. Parcels and narrow and long and stabilisation of borders would result in the lack of possibilities of agricultural activities due to the lack of possibilities to use agricultural machinery
- ◆ **It is necessary to fully integrate the EGiB and the KW systems.**



**Thank you for your attention**

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