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THE IMPACT OF DESIGNATING LIMITED USE AREAS ON THE SITUATION OF AIRPORTS IN POLAND – WHETHER THEY CREATE AN OPPORTUNITY FOR CONDUCTING CORPORATE SOCIAL RESPONSIBILITY

Abstract

A limited use area (LUA) is a legally designated area which is affected by the adjoining facility or other similar structure, e.g. water treatment plant, municipal landfill, communication route, power line/substation, airport. Different kinds of sources causing the limited use of the property have impact either on air quality, noise or generation of electromagnetic fields. According to the law, the permitted emission standards can be exceeded in a LUA. The owner of real property situated in such area may request the purchase of property, compensation for the reduction of the real property value caused by restrictions on use and limitations on expansion of such property, or a claim for the improvement of acoustic comfort. The paper presents the essence of designating limited use areas around airports, analysis of the existing legal framework on the LUA, and an overview of experiences and solutions adopted in selected Polish airports in this regard. The article presents information on how LUAs are designated and on the related prohibitions and restrictions. It also discusses the possible claims and approaches of particular airports towards various types of compensation. The aim of the article is to present opportunities for conducting the corporate social responsibility policy at airports as a result of introduction of limited use areas. It also attempts to assess the good as well as troublesome legal solutions from the point of view of management of Polish airports. When developing this paper, analyzes of the existing legal provisions on LUA designation, internal materials and documents provided by airports, as well as information available on the websites of examined entities were used. A valuable source was also information gathered in the course of in-depth interviews conducted with employees responsible for the management of processes related to the LUA.

Keywords: limited use areas, airport, transport, financial claims

Introduction

An airport is a great prestige for a region and its inhabitants. New jobs are created, economic development is progressing and the interest of foreign investors is growing. However, the operation of an airport may also be associated with problems and nuisance. A particularly annoying issue for people living and working in the vicinity of air routes may be noise. This is why areas of limited use are designated under the routes of aircraft approaching to land or taking off.

A limited use area is a geographically separated protection zone for the land exposed to excessive noise, adopted pursuant to the provisions of the The Environmental Law of 27 April 2001 (Journal of Laws of 2008 No. 25, item 150 as amended). Pursuant to Article 135 Par. 1 and Par. 2 – if the results of an environmental review, an environmental impact assessment or a post-implementation analysis show that, despite having applied the available technical, technological and organizational solutions, the environmental quality standards outside a plant or another facility cannot be met, a limited use area is designated for waste water treatment plants, municipal landfills, composting plants, communication routes, airports, power lines and power stations, and radio communication, radio navigation and radio location installations. A limited use area for a project likely to have significant environmental impacts, as referred to in Article 51 Sec. 1.1 within the meaning of the Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact of 3 October 2008 (consolidated text) (Journal of Laws of 2016, item 353) on the provision of information on the environment and its protection, public participation in environmental protection and on environmental impact assessments, or on businesses or other facilities where an installation qualified as such project is operated is designated by the Provincial Assembly (Sejmik Województwa) by way of a resolution.

Nonetheless, it should be noted that the types of nuisance that may justify the designation of a limited use area around airports can consist not only in exceeding the permissible noise levels in the environment, but also in exceeding the permissible levels of certain substances in the air and failing to meet the soil quality standards.

1. Designation of a limited use area for the Gdansk Lech Walesa Airport

Constant development of the airport infrastructure necessitates the designation of limited use areas which in turn opens the way to file claims related to its designation.

The Gdańsk airport is one of the fastest growing regional airports in Poland, as demonstrated by the state-of-the-art T2 passenger terminal commissioned in 2012. As a result of the expansion, the total airport terminal area is almost 40 000 square meters, and the passenger capacity has increased from 2.5 to 5 million

passengers per year. This investment has contributed to improving the air traffic safety and providing better service to carriers and passengers. The dynamic development of the airport and the intensification of its infrastructure doubtlessly involve benefits for the Pomeranian Province. On the other hand, this development increases the intensity of noise associated with the airport operations (Gdansk Lech Walesa Airport, 2017a).

The limited use area around the Gdańsk airport was designated on the basis of a post-implementation analysis which was carried out in connection with the completion of the first phase of the airport expansion which ended in 2012. This analysis was based on the data collected from both permanent and periodic noise monitoring and the forecasting assumptions, the flight route layout, and the assumptions regarding the aircraft fleet operating at the airport (Gdansk Lech Walesa Airport, 2017b).

A LUA is designated on the basis of the sound envelopes determining the iso-lines of noise with the maximum allowed limit values specified in the relevant regulations. These envelopes are determined taking into account:

- the noise resulting from the conducted air operations;
- the inbound and outbound routes of aircraft – in the daytime and nighttime;
- the air traffic forecasts.

Noise around the Gdańsk airport is monitored by SVANTEK Sp. z o.o. The noise monitoring system is maintenance-free and takes continuous measurements. This system consists of four stations designed to automatically take long-term measurements of the acoustic parameters of the environment (*Podręcznik dobrych praktyk*, 2015).

The post-implementation analysis showed that the noise levels in areas surrounding the airport requiring acoustic protection were exceeded in the daytime and nighttime. For this reason, the noise reduction measures were proposed, including:

- control of the noise certificates of the aircraft used in the airport and preference for the latest generation aircraft meeting the requirements of ICAO Annex II;
- selection of air routes in the way minimizing the negative feelings of the local population;
- limiting flights in the nighttime to the necessary minimum and selecting aircraft of a proper type;
- providing environmental authorities with monthly reports with measurements of the acoustic environment around the airport;
- providing the required data, verified by measurements, to be compiled in accordance with the requirements for the acoustic maps of Gdańsk.

These measures practically exhausted the technical, technological and organizational capacity to reduce the airborne noise. Due to the fact that, despite these actions, noise related to the airport operation went beyond the area to which the Gdańsk airport had a legal title, it was necessary to design of a limited use area around the airport (Grounds for Resolution, 2016).

Figure 1. Limited use area around the Gdańsk airport
Source: (Annex No. 1 to Resolution, 2016)

The designated LUA which spreads from Gdańsk-Chełm to Banino has been divided into two zones. Zone A (interior, i.e. located closer to the runway) covers the area around the airport where the noise exceeds 50 dB in the nighttime and 60 dB in the daytime. The resolution prohibits, for example, to use this area for building hospitals, social care homes and buildings connected with permanent or temporary residence of children and young people such as schools, kindergartens, dormitories, children's homes, etc., including also the prohibition to designate health resort protection "A" zones. It is also prohibited to change the function of buildings into the above mentioned facilities. It is allowed to locate residential housing in zone A on condition that an adequate acoustic environment is provided in rooms requiring noise protection. A larger zone B (the outer zone surrounding zone A) includes areas where the sound level exceeds 45 dB in the nighttime. Restrictions have been imposed also for this zone, however they are less severe than in zone A. The figure 1 below shows the scope of the limited use area around the Gdańsk airport.

2. Examples of LUA designations around selected airports in Poland

Analysis of the acts on the designation of limited use areas around airports proves that LUAs have been designated at the airports in Wrocław, Katowice, Kraków, Warsaw, Poznań and Modlin.

With regard to the airports in Kraków and Warsaw the basis for designating LUAs were environmental reviews prepared for the existing installations on the basis of Article 237 and the Environmental Law. In the case of airports in Katowice, Modlin and Poznań, the basis for the designation of LUAs were environmental impact assessment reports prepared in connection with the projects carried out

- compensation for a loss related to the costs incurred to meet the technical requirements for buildings resulting from the designation of the LUA;
- compensation for another loss.

It follows from the information received in airports that the method of out-of-court negotiations is related exclusively to claims for providing technical protection of buildings the obligation to provide which occurred in connection with the adoption of the act establishing the LUA. Claims for purchase of real property and claims for compensation related to the reduction of value are considered in court. Claims for purchase or exchange of real property are considered only in respect of real property that has been subject to a development ban under the act establishing the LUA.

To prepare for disputes concerning claims, airports administrating aerodromes for which an LUA had already been designated would commission preparing such documentation and developing such tools as:

- a computer application to specify the location of the real property by address, plot number, Land and Mortgage Register number, name of owner or user, etc.;
- an expert opinion on the market value of the real property at the moment of creating the LUA;
- an expert opinion on the estimated amount of the claims expected in connection with the creation of the LUA – for the purpose of creating provisions or sources of financing;
- a database on the characteristics of construction materials and products used over the years in construction (POZ) for the purpose of determining the level of acoustic comfort in buildings and changes required in this area;
- in individual cases: acoustic, technical and construction expert opinions and expert opinions in respect of real property valuation or building cost estimation.

Airports created financial provisions to pay future financial claims. It follows from the available data for the Warsaw airport that: “in the years 2008–2009, Port Authority Porty Lotnicze (Airports State-Owned Enterprise) created a provision for the LUA in an amount totaling PLN 23.9 million” (Pawłowska, Behnke, 2013).

Claims were filed generally by owners of the real property located in the LUA, acting alone or through professional attorneys. In addition to local law firms (mainly solicitor firms) claims are also filed through legal offices specializing in LUA claims or claims settlement companies acting on a similar basis as insurance companies (“indemnity companies”). Claims are not filed by public administration authorities.

In terms of type, the filed claims concern mainly compensation related to the loss of value of the property and they are referred for settlement in litigation, as well as claims for improvement of the acoustic environment of a building or real property for which the airports have formulated amicable or conciliation procedures.

Non-contentious procedures proposed by airports are initiated by applications for acoustic upgrading of buildings or providing acoustic insulation. The position of the airport towards an application is expressed three months of the dated of receipt of the application at the latest. Ad hoc teams of experts in construction and sound engineering are hired for the processing of applications, and the costs of processing of an application of a claimant are in the range of PLN

10 000–15 000. The opinions of experts in the area of construction and acoustics are the basis for stating the airport's position as to the claim and a proposal or a counter-proposal of the expenditure required to satisfy the claim or pay the compensation. Owners or users of real property are not charged with the cost of analyses, regardless of the outcome. The POZ Airport prefers payment of financial compensation. The WAW Airport enters into tripartite agreements with real property owners and contractors of acoustic insulation works. The research relates exclusively to residential units and housing. Claims of a different nature and claims that have not been settled in a non-contentious manner are referred to the legal departments of airports.

During the process of submitting and processing LUA applications, usually small social organizations are established, mainly associations grouping interested owners of real property located in the LUA. However, the role of these organizations is not significant, an environmental organizations do not show any interest in the LUA issues.

Conclusions

The actions of the legislators were aimed at providing a possibility for residents and users of areas located around airports to claim compensation from airport authorities for the restriction in the manner of using the real property. The purpose of this legal instrument was to provide a possibility to obtain compensation resulting from the nuisance of living in the vicinity of an airport. However, as the experience gained so far shows, the literal approach to this provision of the Polish courts and the activity of compensation agencies aiming at obtaining the highest possible compensation for the loss of the real property value due to the noise emission has reduced it only to the possibility of obtaining additional income. This provision is not considered as an opportunity to improve the acoustic comfort of the population. As a result, the Polish airports which wished to implement the principle of corporate social responsibility and facilitated the possibility of filing claims (Warsaw and Poznań) soon became aware that the scale of the claimed and awarded compensation started to threaten their core business. As a result of the introduction of this provision into the legal system, airports that were often only "working their way up" after a period of intensive investment were exposed to an attack by compensation agencies rather than directly by residents. The objective of the activity of such agencies is to lead to litigation and not to reach a settlement. In consequence, the policy of an open approach to the inhabitants of the airport authorities caused a huge financial burden due to the need to participate in court proceedings. The LUA instrument is treated as a way to earn an extraordinary gain and not as an opportunity to develop good practices to improve the acoustic comfort of the population. In this situation, the introduction of corporate social responsibility is becoming too costly for the operators of aerodromes and they cannot afford it. It seems that a reasonable solution in this situation would be to set up social committees which, with the involvement of the local authorities

and the airport authorities, would be able to work out appropriate solutions that would be a compromise acceptable to all parties taking into account the interests of the entire community and not just selected residents.

As a result, the experience of the Polish airports indicates the unfavorable effects of introducing the principle of social responsibility. This is currently distorting the idea of an instrument that was intended to contribute to the dialogue between the residents and the activity of a nuisance neighbor which is the airport for the nearby residents.

References

- Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact of 3 October 2008 (consolidated text) (Journal of Laws of 2016, item 353).
- Annex No. 1 to Resolution (2016), Annex No. 1 to Resolution No. 203/XVIII/16 of the Pomeranian Provincial Assembly of 29 February.
- Gdansk Lech Walesa Airport (2017a), *Nowy terminal pasażerski T2*. Available from <http://www.airport.gdansk.pl/airport/investments/new-terminal-t2> [Accessed 22 February 2017].
- Gdansk Lech Walesa Airport (2017b), *Obszar ograniczonego użytkowania*. Available from <http://www.airport.gdansk.pl/airport/environmental-protection/confined-area> [Accessed 21 February 2017].
- Grounds for Resolution (2016), Grounds for Resolution No. 203/XVIII/16 of the Pomeranian Provincial Assembly of 29 February 2016 to designate a limited use area around the Lech Walesa Airport in Gdańsk.
- Netka, K. (2015), "Wokół lotniska będą obszary ograniczonego użytkowania", *Dziennik Bałtycki*, 6.08.2015. Available from <http://www.dziennikbaltycki.pl/strefa-biznesu/wiadomosci/z-regionu/a/wokol-lotniska-beda-obszary-ograniczonego-uzytковania,10176200> [Accessed 21 February 2017].
- Pawłowska, J., Behnke, M. (2013), *Analiza benchmarkingowa – dotycząca zarządzania procesem tworzenia obszaru ograniczonego użytkowania (OOU) wokół portów lotniczych oraz rozstrzygnięcia roszczeń zgłoszonych w następstwie utworzenia tego obszaru – rekomendacje dla Portu Lotniczego im. Lecha Wałęsy w Gdańsku wynikające z doświadczeń wybranych, polskich portów lotniczych*, Sopot.
- Podręcznik dobrych praktyk* (2015), Port Lotniczy Gdańsk Sp. z o.o., Gdańsk.
- Resolution (2016), Resolution No. 203/XVIII/16 of the Pomeranian Provincial Assembly of 29 February to designate a limited use area around the Lecha Walesa Airport in Gdańsk.
- The Environmental Law of 27 April 2001 (Journal of Laws of 2008 No. 25, item 150 as amended).
- Urbaniak, J. (2016), *Gdańsk: obszar ograniczonego użytkowania wokół lotniska*. Available from www.rynekinfrastruktury.pl [Accessed 21 February 2017].
- Websites and interviews at selected airports.

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