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The Legal Definition of Railway Areas in Poland. The Limitations of Investment and Conducting Business Activity on the Railway Areas

Foreword

The investment potential of railway areas, as well as the possibilities of their use and the location of the investments of various types should be an important factor in the debate on the problems of development of modern cities¹. Railway stations are an increasingly important element of revitalization programs. They are given several new functions by linking them with shopping malls, and examples of this are the train stations in Warsaw or in Poznań. Due to the excessive use of the institution of the railway areas in the past years the resource of railway areas in Poland expanded significantly and reached substantial land area and value. Neglect of the problem of railway areas has led to significant communication difficulties and degradation around railway lines. When analyzed at an economic level railway areas, are usually attractive places to locate production or retail activities. Railway lines often run through the central parts of the Polish cities. Thanks to their central location, they can easily become attractive locations for new investments, which may visually and functionally change the areas along the railway lines.

The establishment of special areas may involve conflicts of interest and cause social opposition. Resolving conflicts in the context of restrictions related to special areas requires, in the opinion of the doctrine, the introduction of new negotiation procedures with the interested parties. This may involve the following conflict of interests: the creation of a railway area lies in the public interest, due to the special character of the railway and safety reasons. However, preventing the creation of such a form of administrative protection lies in the local public interest, which is represented by local governments and investors. This may be related to the pressure of interest groups operating in the relevant area, represented by individual residents who have until now conducted business in these areas. Failure to resolve such conflicts would mean depriving the inhabitants of

1 A. Górski, *Planning issues in relation to railway areas on the example of Kielce*, in: „Współczesne problemy i kierunki badawcze w geografii”, vol. 3, Kraków 2015, pp. 63–72.

the area of their livelihoods and will limit investment opportunities for the investors. Thus it is in the local public interest of the inhabitants to block the establishment of the railway area. However, the public railway transport provider and infrastructure manager will possibly support the creation of such an area. This example reveals the real existence of a conflict of interest with regard to the creation of special areas.

There is no literal definition of the objects and devices of public transport in the Polish legal system and such items should be interpreted on the basis of a functional interpretation in the framework of land, river, rail and air transport law provisions. Therefore, we can describe the objects and devices of public transport as items dedicated to providing transport which has a public nature, meaning publicly available. Examples of the objects and devices of public transport in the Polish legal system are: trackways and tram stations (the Public Road Act of 1985), train stations, bus stations (the Road Traffic Act of 1997), railway areas (the Railway Transport Act of 2003), harbors, marinas (both sea and river) and airports (the Air Law of 2002)². The objects and devices of public transport do not include objects which are vicariously connected with transport e.g. the catering industry or hospitality industry. This category of objects does not come under the exploitation and maintenance of railway and the transport of passengers and goods as they are rather part of the supply base for passengers.

Railway Areas as Special Areas

Railway areas may be included in a wide category of special areas which are established to shape and maintain the land. In the doctrine of Polish administrative law, the concept of a special areas occupies a strong position and it is emphasized that the special area is developed on the basis of administrative law and it is a conceptual category which gives rise to specific legal consequences both in the field of administrative law and civil law, and partly even in criminal law. However, the concept of special area cannot be characterized as internally unified. For this reason, the essence of the issue lies, it seems, not only in defining the concept of a special area and its rank as a legal measure, but in the legal consequences of its establishment for its addressees, for example, owners (perpetual usufructuary) of real estate subject to a special legal regime in force within it³. However, it should be noted that within special areas there is a significant diversity of them, determined by i.a. the purpose, type and scope of protection and the size of the established area, as well as the mode of their creation and the implementation of priority tasks and regular tasks in the area.

2 J. Jaworski, A. Prusaczyk, A. Tułodziecki, *Ustawa o gospodarce nieruchomościami. Komentarz*, Warszawa 2017.

3 R. Hauser, Z. Niewiadomski, A. Wróbel ed., *Prawo administracyjne materialne, System Prawa Administracyjnego*, Warszawa 2017.

In addition, it should be noted that the administrative and legal consequences may also be the civil law effects of the creation of a special area, which are expressed in a special protection regime subject to the priority objective of creating a given type of a special area. In the field of civil law, these effects are reflected, for example, in limiting the right to property or other property rights, or in limiting legal transactions in this area. This is due to the increasing legal interference of the state, serving the implementation of a state-wide public interest in the form of implementing the priority task of creating a given type of a special area.

This means that the content of the special area regime should be subordinated to the function that such a space is to fulfill, even if it is not applicable in this area. Therefore, the creation of a special area requires a legal act for its creation to be issued each time, and it cannot refer to the character of a given area or to its features. It should be taken into account that special areas are created on a specific separate area, which corresponds to the indicated premises. The problem is, however, that there are special areas which are created directly by a statutory norm in correlation with the features possessed by these special areas, including their widths, and cover the entire area that corresponds to the designated conditions. The most important categories of special areas are: national parks, nature reserves, landscape parks and protected landscape areas. Among them railway areas are special areas which are created on the basis of a legal norm in correlation with the specific features possessed by the railway area.

Nevertheless, it is not acceptable to adopt a position according to which the creation of a special area can be made by means of a criterion of features or the legal character of the land on which it is to be created, and cover the whole area corresponding to the abovementioned premises. This would cause there to be a lack of a criteria for distinguishing a special area from other legal structures that bind a specific catalog of standards (legal regime) with a designated space, e.g. a forest⁴.

It should also be emphasized that the creation of a special area does not mean that the existing legal order in force within it is completely repealed, but that it changes the subject and subject matter in the act creating the special area. This means that the standards that are not changed or have not been excluded – after the establishment of a special area – are still in force in such special area.

Legal Definition of Railway Areas

The railway areas are defined in the Railway Transport Act of 28 March 2003 as a ground surface specified by geodesic plots on which railways, buildings, constructions and infra-

4 Z. Niewiadomski ed., *Planowanie i zagospodarowanie przestrzenne. Komentarz*, Warszawa 2008.

structure dedicated to the management, exploitation and maintenance of railways and the transport of passengers and goods is located. All railway stations in Poland are situated on railway areas. As things currently stand there is no authorized public administration body to issue a binding decision (certificate) clarifying whether the land is a railway area or not. Consequently, the real estate may be classified as a railway area only based on its function and profile. There is no public register which includes the list of railway areas, as there is no legal obligation to create such registry. Moreover, the indication of what is classified as a railway area can be found in an area plan if such document was implemented in the area. As described above, the regulations regarding the location of railway areas are not precise enough and do not make it possible to clearly stipulate which real estate belongs to the railway area. The practice shows that the situation in which the public authorities are unaware which plots of land constitute railway areas is not an isolated incident. What is more, frequently the boundary of the railway area runs across the middle of a plot of land which may make investment on such plot impossible. The practice shows that the most effective way to identify whether a plot of land is a railway area is to apply directly to the province governor based on the law on access to public information.

The court ruling of the Voivodeship Administrative Court in Warsaw dated 28 March 2007, IV SA/Wa 256/07 indicated that if there are no buildings or structures related to railway infrastructure, then we can assume that this plot of land shall not be classified as a railway area. We can treat this argumentation as only an auxiliary claim, as the adjudicating panel did not elaborate in detail on whether it is the only condition for determining the legal status of the area, and whether the railway area is created directly by the statutory norm in correlation with the features possessed by these areas. The adoption of such a position would result in chaos in determining what is and what is not a railway area. In addition, the adoption of this solution would result in the recognition of vague and uncertain criteria to determine when – in a temporal sense – the given area becomes a railway area; that is, when it comes to existence in the legal meaning.

A different institution to a railway area is railway land which is defined in the Regulation of the Minister of Regional Development and Construction regarding Land and Property Register of 29 March 2001. Railway land may be helpful in classifying what a railway area is, but it does not have the defining meaning, as the Land and Property Register is not binding with respect to the legal status of the real estate.

Limitations of Investment on the Railway Areas

An investor who wants to develop real estate covering a railway area has to comply with the obligations imposed on it on the basis of regulatory statutes, mainly the Railway Trans-

port Act. The investor must not erect any type of building on the railway area if it is not exclusively designated for railway transport requirements. In other words, there is a statutory forbiddance on the construction of any commercial buildings on such areas. The definition of railway area stipulated in the Railway Transport Act specifies an exhaustive list of buildings, constructions and infrastructure which may be located on the railway area which results in the prohibition of construction of any buildings and constructions not intended for the management, exploitation and maintenance of railways and the transport of passengers and goods. The prohibition is strengthened by the following forbiddance on locating the buildings and constructions not exclusively designated for railway transport requirements in the proximity not less than 10 meters from the border of the railway area (Article 53 of the Railway Transport Act). Based on the general rule *a minori ad maius* – since the law forbids doing what is lesser, it forbids doing what is greater all the more – if it is forbidden to locate buildings and constructions within 10 meters from the border of the railway area, it is even more forbidden to locate buildings and constructions within the railway areas. This issue was widely analyzed in the court ruling of the Supreme Administrative Court of 16 January 2013, II OSK 1691/11. The adjudicating panel in this case came to the conclusion that the lawmaker did not provide any possibility to erect buildings and constructions not exclusively designated for railway transport requirements on the railway area. During the dispute, the complainant claimed that there is no provision of law which directly forbids land development with buildings and constructions not exclusively designated for railway transport requirements on railway areas. The Supreme Administrative Court decided that in duly substantiated, exceptional cases it is acceptable to dissent from the general rule expressed in Article 53 that locating buildings and constructions within 10 meters from the border of the railway area is prohibited. Therefore, the dissent may lead to the location of buildings and constructions within 10 meters from the border or even directly on the border of the railway area. Nonetheless such dissent may not lead to the situating of buildings and constructions within the railway areas, because dissent from the rules of situating the buildings and constructions shall not be interpreted extensively. To conclude, in this case the Supreme Administrative Court legitimized the rule based on which it is forbidden to erect on the railway area buildings and constructions not exclusively designated for railway transport requirements.

This argumentation was recalled in a comparable case analyzed in the court ruling of the Supreme Administrative Court of 7 November 2013, II OSK 1276/12. Additionally, the adjudicating panel pointed that the lack of possibility of locating on the railway area buildings and constructions not exclusively designated for railway transport requirements is strengthened by the systemic interpretation of Article 23 of the Railway Transport Act, which stipulates that the property manager, railway operator and rail link user may operate and use only buildings and constructions designated for railway

transport requirements, and only on the basis of the approval certificate issued by the President of the Office of Rail Transport.

Moreover, it is not allowed to locate buildings and constructions not exclusively designated for railway transport requirements even if there are already other objects not exclusively designated for railway transport requirements in the railway area, and the presence of such objects in the railway area does not mean that the land is no longer a railway area. The above conclusion would be arbitrary, with no justification for the interpretation of the law or for ordinary reasoning. In this sense, the public administration body would be deprived of even the possibility of ordering the demolition of objects unlawfully erected on the railway area. The definition of a railway area presented in the general part of the Railway Transport Act does not allow any deviation from the specific character of this area. This provision contains a clear message of its unique nature and any attempts to extend this concept, in particular the „not forbidden” manner, are without foundation, which has been confirmed in the court ruling of the Supreme Administrative Court of 18 December 2008, II OSK 1657/07.

The general prohibition of location of buildings and constructions not exclusively designated for railway transport requirements includes any type of building or construction, including advertising mediums of different types. Such a conclusion is also based on the fact that the legal definition of a railway area defines in a positive way any objects that may be located on it, which means that the location of objects not listed there is prohibited. This justifies the conclusion that no advertising media (of any type) can be located in this area which is intended for other purposes, which has been confirmed in the court ruling of the Supreme Administrative Court of 3 February 2010, II OSK 249/09.

Other Limitations on the Railway Areas

The establishment of a special area consists in introducing, in specific areas, obligations, orders and prohibitions binding legal entities carrying out their activities – mainly business activities. The effect of establishing a special area is the introduction of a special legal regime in the area to ensure the implementation of the objective for which the area was established. A characteristic feature common to all special areas is the priority of the norms of special regulations before the norms of universally applicable law⁵. One of the legal consequences which is generally binding for the establishment of a special area is the prohibition on the construction on this area of any building objects serving business purposes, and also those intended for housing purposes. In special areas, it may also be forbidden to locate any projects that may significantly affect the environment or

5 Zakrzewska M. B., *Ochrona środowiska w procesie inwestycyjno-budowlanym*, Warszawa 2010.

facilities that may pose the threat of a serious industrial accident. To conclude, it should be noted that the most characteristic legal effects of the establishment of a special area are those resulting from a special legal regime: 1) restrictions on the right to property and other property rights, 2) public (administrative) burdens, and 3) various types of police and administrative provisions⁶.

The Railway Transport Act imposes several obligations on the entity which is the railway infrastructure manager on the railway area. The infrastructure manager is the entity responsible for managing the railway infrastructure, or in the case of constructing a new infrastructure an entity that has started to build the infrastructure as an investor. The tasks of the infrastructure manager can be carried out by various entities.

The main obligation of a railway infrastructure manager is the management of the properties which constitute the railway infrastructure (bearing in mind that the railway infrastructure is *inter alia* buildings located on the railway area). The railway infrastructure manager has to obtain a security authorization which is issued by the President of the Office of Rail Transport. The security authorization is issued for a limited period of 5 years. According to the jurisprudence, it is a complicated and demanding procedure.

Secondly, the railway infrastructure manager is obliged to maintain order and safety on the railway area. The railway infrastructure manager is obliged to maintain Railroad Guard on the property. The costs of the Railroad Guard are covered by the railway infrastructure manager. Access to railway areas is allowed only in places specified by the manager and is subject to Railroad Guard supervision. The precise list of obligations is presented in the Regulation of the Minister of Infrastructure on the order regulations applicable in the railway area, in trains and other railway vehicles of 23 November 2004.

Additionally, there are several obligations of the railway infrastructure manager the non-performance of which is punishable under law by a fine and a monetary penalty up to 2% of the annual income of the railway infrastructure manager. Moreover, it is prohibited by law to conduct any business activity on the railway area without prior consent of the railway infrastructure manager or railway company. Finally, it is prohibited by law to sell, serve or consume any alcohol in the railway area.

As described above, the Railway Transport Act imposes numerous duties connected with the existence of a railway area on a given plot of land. However, the question arises whether the lawmaker's intention was to charge the owner or perpetual usufructuary of a property located within the railway area with so many detailed duties which are rather addressed to professional entities conducting railway activities.

6 Ibidem

Conclusions and de Lege Ferenda Postulates

The increasing role of railway areas for investors in Polish cities may be observed in recent years. The growing importance of railway areas should be accompanied by more comprehensive and precise legal regulation which does not raise any interpretation doubts. The lawmaker should finally decide what kind of character railway areas should have. It has to be noted that it is not acceptable to maintain the current position according to which there is a lack of a precise criteria for distinguishing a railway area from other legal structures. Moreover, it would be desirable to establish a public register of railway areas or to make it possible for an authorized public administration body to issue a binding decision (certificate) clarifying whether the land is a railway area or not. Finally, the author of this paper is of the opinion that it should be made possible in future to operate, invest and erect in railway areas buildings and constructions designated not only for railway transport requirements (or at least objects which are vicariously connected with transport e.g. the catering industry or hospitality industry).

In the light of the increasing investment potential of railway areas, train stations and areas along the railway lines, it seems reasonable to make it possible to invest in retail, services, offices and hotels in railway areas, which can significantly contribute to the revitalization of areas that are currently being gradually degraded despite their attractive location. Reasonable legal regulation – which we are currently lacking – would make it possible to balance the interests of the public rail carrier, potential investors and the local society, considering both safety and transport requirements on the one hand, and the economic, functional and aesthetic values of the area on the other hand.

Literature

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SUMMARY

The Legal Definition of Railway Areas in Poland. The Limitations of Investment and Conducting Business Activity on the Railway Areas

The paper analyses the legal definition of railway areas in Poland based on the Railway Transport Act. The author tries to find an answer to the question of what the legal status of railway areas in the Polish legal system is, with emphasis on the classification of railway areas to the wider group of special areas. Moreover, the paper describes the restrictions on investments on railway areas which are presented based on the previous judicature of the Polish administrative courts. Then other detailed obligations resulting from the special legal regime in this area are explained.

Keywords: railway areas, Railway Transport Act, investment on railway areas, limitations on railway areas, special areas

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