

## Resolutions Introducing Restricted Use Areas around Airports as Special Local Legislative Acts, Based on the Example of Restrictions on Residential Development

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<b>ABSTRACT</b>	
<p>Restricted use areas (hereinafter: RUA), as a form of intervention by public authorities, are presented as local law acts of special nature, capable of influencing both restrictions on the ownership right of a property and municipalities' planning authority. The main research problem presented in this article is frequent overinterpretation of the provision of Art. 129 of the Environmental Law Act (ELA), offering the possibility to assert claims on account of restrictions to the ownership right. It turns out that residential property owners, against the RUA regime, strive to obtain compensation for their alleged loss. The discussed phenomenon is widespread despite the fact that out of eleven RUAs only in five cases restrictions were introduced to the residential function of already existing or newly designed objects. In the light of the above, the purpose of this article is to depict the problems of influence of the scope of the introduced restrictions concerning residential buildings located in the direct vicinity of airports on the possibility to obtain compensation under Art. 129 ELA. The analysis will cover also the impact of resolutions establishing RUAs on administrative powers and on the civil law institution of ownership. The author's attention was also focused on demonstrating a direct impact of the relationships introduced in RUAs on the behaviour of participants in the real estate market. The research is conducted, among others, based on the legal dogmatic method and legal theoretical method.</p>	
<b>Keywords:</b>	restricted use area of an airport, local legislative act, state intervention in the real estate market, restrictions on housing development, airport noise, municipalities' planning authority
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## INTRODUCTION

Restricted use area (hereinafter: RUA) is a term introduced in the Polish system of environmental law in Heading 2 of the Act of 27 April 2001 – Environmental Law (hereinafter: ELA.). This legal institution is intended to restrict negative impact of certain objects on the natural environment, especially on human health and live (Gruszecki, 2019, p. 368). Minimization of the negative impact of excessive noise on human life and health consists in the possibility to introduce necessary restrictions regarding the purpose and use of land, and to set technical requirements for specific types of buildings within the area. Intervention in the form of RUAs allows to exceed environmental quality standards<sup>1</sup>, which is sometimes understood as “legalization of noise” (Voivodeship Administrative Court judgment, 2013). Interpretation of the provisions on RUAs in the context of the entirety of ELA provisions points to the conclusion that the legislator decided to sanction situations in which, for economic or social reasons, it is impossible to limit the negative impact of an investment to the line of the property on which the investment is implemented. RUA introduces, within the specific area, a specific legal regime which, by imposing restrictions, prohibitions, requirements, may limit the right of ownership, other property rights or the possibility to conduct business (Boć, Nowacki & Samborska-Boć, 2008, p. 299). It is beyond doubt that such legal institution in the area of environmental law constitutes a legal activity of public administration bodies assuming the form of intervention in the freedom of establishing not only ownership relationships but also market trends in the specific area. An immanent aspect of RUAs is the securing of sustainable development in case of infrastructural investments characterized by exceptional environmental burdens, which must however be implemented and operate as conducive to the social and economic development (Miler, 2012, p. 17).

RUA imposes restrictions, that is prohibitions or requirements applicable in a specific area where, in spite of using the available technical, technological and organisational solutions, environmental quality standards cannot be complied with outside the facility or another object. This means that

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<sup>1</sup> Under Art. 3 item 34 ELA, the term ‘environmental quality standard’ should be understood as requirements to be complied with at a specific time by the environment as a whole or by its specific natural elements. The problems of admissibility of their transgression was addressed in Art. 144(3) ELA (installations) and in Art. 174(3) ELA (roads, railway lines, port and airports). Interpretation of those provisions indicates that violating environmental quality standards outside the area to which the installation operator or object manager has a legal title is permissible only when a RUA has been established

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intervention of public authorities has a local dimension. One of the principal roles of RUAs is to define mutual relationships between the facility negatively affecting the environment and owners or perpetual usufructuaries of the properties affected by the transgressions of environmental quality standards. The effect is a correction of ownership rights between the parties to a dispute, and it becomes necessary to compensate for loss, which is supposed to confirm the economic dimension of the transfer (Habdas & Konowalczyk, 2018, p. 8). In light of the above, it should be remembered that resolution establishing a RUA is a local legislative act which, as a rule, translates into the right of ownership as expressed in Art. 64 of the Constitution of the Republic of Poland (hereinafter: Constitution of the RP). Therefore, interference in the sphere of ownership should be necessary, and should be the only means to produce the effect desired by the legislative body (Rakoczy, 2007). In consequence, it seems that the process of establishing a RUE should be carried out as accurately as possible, so that the norms to be followed are purposeful and adequate from the point of view of interference in ownership rights.

The resolution establishing a RUE is an act whose provisions translate as well into the municipality's planning authority. The basic unit of the fundamental state division loses, on that account, the possibility to fully define its spatial order and, in the same way, the above may have an indirect impact on the change of behaviour of participants in the property market. The legislator laid down, in Art. 73(1) item 2 ELA, that the local zoning plan and the decision on land development conditions and site management must consider, in particular, the restrictions following from the establishment of restricted use areas. It must be emphasized that the local legislative act (local zoning plan) and the administrative decision (so called DC) mentioned in that provision are instruments defining the methods of exercising the right of ownership (Judgment of the Supreme Administrative Court, 2019).

The influence of specific infrastructural facilities on neighbouring properties is apparent on residential properties located in the direct vicinity of airports. As a result of a dynamic growth in air operations in the period from 2004 to 2020 (Civil Aviation Authority), the largest airports in Poland have implemented infrastructural investments, expanding their area of influence and bringing it closer to residential properties. Considering the fact that the protection of residents against violation of the noise level relating to the activities pursued by airports has been based both on civil law and administrative law instruments, we can presently observe concurrence of the restrictions existing prior to the intervention with the restrictions relating to the establishment of RUAs, which leads to complex transfers of rights (Habdas, & Konowalczyk, 2018, p. 8).

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This article is intended to depict the problems of restrictions imposed on residential housing, addressed both to municipalities and property owners. In the first place, it will assess the efficiency of the introduced restrictions. By the term efficiency, one should understand effectiveness of external factors (restrictions) on the change of behaviour of the addressees of the provisions of the discussed local legislative acts. On that basis, I will try to answer the question if the RUAs, in their present form, offer adequate protection to subjects exposed to excessive nuisance.

The problems will be discussed in the context of the RUAs established around five airports, i.e. the Warsaw Airport (hereinafter: AP), (Resolution 76/11, RUA WWA), Cracow AP (Resolution XXXII/470, RUA KRK), Katowice AP (Resolution IV/53/12/2014, RUA KTW), Łask AP (Resolution XXIX/379/16, RUA LSK), Poznań-Krzesiny AP (Regulation 40/07, RUA KRZ). Moreover, with a view to demonstrating differences between the resolutions imposing restrictions on residential housing and resolutions allowing the assignment and use of land for residential purposes, I will present the example of the Poznań-Ławica AP (Resolution XVIII/302/12, RUA LAW).

### **LITERATURE REVIEW**

The problems of airports' impact on neighbouring residential properties is subject to investigations by both national and foreign research teams. The subject of analysis are primarily economic and environmental factors in the context of social acceptance for the operation of a facility exceeding the acoustic standards as adopted in a given legal system (Liebe, Preisendörfer & Bruderer Enzler, 2020, p. 99). R. Le Boennec and F. Salladarré emphasize that sound pollution is an essential element translating into the condition of the natural environment which, as a rule, may affect the attractiveness of a given location assigned for housing development (Le Boennec & Salladarre, 2017, p. 83). It should be noted that, at the same time, those authors point out that the acoustic factor does not have a significant impact on the global value of the residential property market (Le Boennec & Salladarre, 2017, p. 83). It is possible that a given location is so attractive that deterioration of environmental quality standards does not affect negatively the property's value (Alquezar & Macedo, 2019, p. 163). However, in spite of the foregoing, one should not disregard the question of influence of excessive noise on the condition of natural environment, including human health (Alquezar & Macedo, 2019, p. 163). Considering the fact that the protection of the environment and health belong to the overarching principles enshrined in the

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Charter of Fundamental Rights of the European Union<sup>2</sup>, public administration bodies should take measures to contain, as efficiently as possible, the negative impact of external factors both on the condition of the environment and physical and mental health (Steichen, 2000, p. 367). One of the methods of protecting the indicated values is the use of administrative powers for spatial management on local and regional level so as to insulate residents against potential threats. In this context, J. Sommer emphasizes that the legislative processes intended to protect the environment as well as human life and health may imply restrictions on the right of ownership (Sommer, 2000, p. 28). This is the case since ownership should always be exercised taking account of its social and economic purpose, which includes the requirements relating to the needs of environmental protection (Dołęgowska, 2015, p. 215). The restricting instruments are, among others, institutions strictly relating to the zoning system, such as industrial park or RUA (Nowak, 2013, p. 197).

Academic authors point out that the problems of influence of airport operation on neighbouring properties assume multifaceted significance. On one hand, there is an economic factor of the potential impact of allowing transgressions of acoustic norms on the value of real estate and, on the other one, the factor relating to the intervention of public administration bodies limiting control over a property by means of requirements and prohibitions introduced in connection with the implementation of postulates of natural environment protection. The essence of the discussed administrative law intervention is introduction of additional restrictions in the use of land for residential housing purposes (e.g. reduction of building density) or technical requirements concerning noise insulation of buildings (Batóg et al., 2019, p. 412). This permits further operation of a given type of facility even though the facility is unable to comply, outside its premises, with the environmental quality norms, as well as minimization of the effects of exceeding the environmental quality standards harmful to human health or to the environment (Habdas, 2020, p. 9). M. Habdas also indicates that introduction of restrictions is not so much a means of reconciling different values (predominantly, ownership protection and environmental protection with the economic freedom and the need to ensure adequate social and civilizational development) as a means of their equilibration (Habdas, 2020, p. 10). In other words, the foregoing makes an implementation of the postulate of sustainable development, which does not protect any of the values in absolute terms (Habdas, 2020, p. 10). The research carried out indicates that sustainable development may assume a form of compromise and, as a consequence,

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<sup>2</sup> Art. 35 and Art. 37.

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introduction of restrictions on the use of the areas in the vicinity of airports may result in reduction of property prices, contributing to the lack of market activity in a limited area (Habdas, 2020, p. 10).

At this point, it should also be noted that imposition of specific restrictions on the use of properties follows from objective premises based on environmental analyses (Miler, 2012, p. 89). Therefore, it must be concluded that the final shape of a RUA should strictly relate to the results of the research and analyses of harmful factors in a given area. For the above reason, it must be noted that the actual impact of a harmful factor is not determined only by the specific RUA border, i.e. isoline. It is essential to examine which properties specifically have been affected by excessive nuisance. It seems that, as opposed for instance to “public road” RUAs, in the context of the airports’ impact, the authors of resolutions have completely disregarded the possibility to delimit the area’s borders pointwise<sup>3</sup>. In the same way, special attention has focused on a particular area, and not specific properties. This leads to a situation of neglecting the heterogenous nature of the area covered by the resolution, which can be exemplified by unjustified extending of the special protection afforded to sensitive housing in the understanding of the Regulation of the Minister of Environment on admissible noise levels in the environment to residential buildings<sup>4</sup>. It must be remembered that the method of delimiting RUA is an essential element of the procedure of enacting a specific legal regime since if the legislative bodies in a poviast or voivodeship adopt a RUA, it may turn out that the restrictions will not relate only to the property use but also to the possibility of assigning areas, for instance, for residential development. This means that despite the municipality’s competence in the area of defining spatial order, the municipality’s independence in that regard will be limited by the need to follow the provisions of the resolution establishing the RUA as adopted on the local or regional level (Federczyk, Fogel & Kosieradzka-Federczyk, 2015, p. 275).

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<sup>3</sup> An example Restricted Use Area delimited pointwise is the area established by the Resolution IV/53/11/2014 of the Silesian Voivodeship Assembly of 25 August 2014 establishing a restricted use area for the “Construction of the public road Drogowa Trasa Średnicowa Katowice-Gliwice, “Western” Part from km 5+320,00 to km 8+119,85 (section G1)”

<sup>4</sup> The term ‘sensitive housing should be understood, among others, as hospitals, nursing homes, buildings relating to permanent or temporary stay of children and youth. In the cited Regulation, the legislator specified lower admissible noise levels than those provided for residential housing. As a result, when delimiting a uniform area based on an isoline for sensitive housing, it is possible to extend the restrictions to residential housing which, according to the Regulation, should not fall within the RUA.

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Based on the opinions presented above, the need has been identified to analyse the question of impact of the restrictions on the use and assignment of land for residential purposes as specified in the local legislative act on the municipal authorities' freedom of delivering decisions in respect of the exercise of the ownership right by property owners.

### **THE PROCESS OF ESTABLISHING A RESTRICTED USE AREA**

In the Polish legal system, the process of establishing RUAs was laid down in Art. 135 ELA. The legislator specified the procedure of establishing special areas within whose limits specific deviations are permitted from the prohibition of violating environmental quality standards in terms of nuisance affecting third party's property (Federczyk, Fogel & Kosieradzka-Federczyk, 2015, p. 273). If the results of an environmental review or a concluded environmental impact assessment procedure or post-implementation analysis indicate that, despite using the available technical, technological and organisational solutions, it is impossible to comply with land quality standards outside the premises of the facility or another object, a RUA is established for a sewage treatment plant, municipal landfill, compost plant, communication route, airport, power line or power distribution station, gas network facilities or radiocommunication, radio-navigational or radiolocation installations (Art. 135 ELA). Consequently, the cited provision demonstrates that RUA may be established only in relation to the listed objects, whose negative influence on the environment has been ascertained in a specific environmental report. At this point, it must be highlighted that the abovementioned documents are not of uniform legal nature (Lipiński, 2010, p. 59). As a result, for reasons of completeness, I will first present their characteristics.

The first of the documents mentioned in the provision of Art. 135 ELA is environmental review, carried out to assess the environmental impact of an already operating installation or other type of activity (Bukowski, 2013, p. 221-223). According to the decision of the Supreme Administrative Court, a basic reason justifying imposition of the obligation to prepare an environmental review is the presence of an installation or device the operation of which may imply a negative impact on the environment (Judgment of the Supreme Administrative Court, 2012). The environmental protection authority, upon a reasonable suspicion of deterioration to the environmental situation, initiates ex officio an administrative procedure. The purpose is to impose on an entity using the environment an obligation to prepare and produce an environmental review (Judgment of the Supreme Administrative Court, 2011). This is a special type of specialist opinion ascertaining the factual situation relating to the

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operation of an installation (Judgment of the Supreme Administrative Court, 2011). If violations are confirmed, the environmental review is a basis for actions intended to remedy the negative impact.

As indicated above, environmental review is carried out in relation to an already existing installation. On the other hand, in a process of planning an intended investment it is necessary to obtain a so called environmental impact assessment. It is an instrument of ecological development whose essence is to specify the environmental impact of investments defined in legal provisions, taking into account measurable and non-measurable environmental consequences. This assessment is made with a view to finding solutions which minimize social, economic and environmental conflicts caused by the designed investment (Cupiał, 2012, p. 63). The assessment is a part of the procedure for the delivery of a decision on environmental conditions of authorising the investment. It is delivered upon verification of the report on the investment's environmental impact (Cupiał, 2012, p. 63), upon obtaining the opinions and consultations prescribed by the law and upon providing opportunities for public participation in the proceedings (Art. 8 Act of 3 October 2008, hereinafter: AIEA).

The last of the documents providing ground for the establishment of a RUA is post-implementation analysis. Under Art. 82(1) item 5 AIEA, it is one of the stages of assessment of an investment's environmental impact, following the delivery of administrative decision where the authority obligates the applicant to provide such analysis. The essence of post-implementation analysis is the assessment of the actual impact of an already implemented investment in respect of possible violations, of which the parties did not necessarily know in advance (Voivodeship Administrative Court judgment, 2015).

If the above documents indicate a lack of the possibility to prevent harmful nuisance despite using all available technical, technological and organisational solutions, the competent body of the territorial self-government unit will create a RUA. Based on the provision of Art. 135 ELA, it may be concluded that the legislator provided for several means of initiating the procedure for establishing a RUA. The first one is an application from the entity using the environment in excess of its quality standards. Another possibility was provided for in Art. 135(4) ELA. This refers to situations when the environmental impact assessment reveals the need for an intervention. On such occasions, the obligation to establish a RUA is expressed in the construction permit issued for the investment. Importantly enough, adoption of the respective resolution is a precondition to the delivery of the structure use permit, and, as a consequence, the cited provision should provide a

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sufficient incentive for the interested entity to apply for the establishment of a RUA (Bar, 2019, p. 428). The situation is different in case of the need to legalize harmful nuisance under an environmental review or post-implementation analysis. In principle, it is also in the interest of the entity using the environment to file a respective application with the authority since otherwise the harmful activity will be found illegal. However, in the discussed situations, it is possible for the authority to initiate the proceedings *ex officio*, since both types of documents are submitted to the marshal or starost (Bar, 2019, p. 428). At this point, it should be stressed that Art. 135.(5) ELA lays down a special procedure of establishing RUAs for investments consisting in the construction or reconstruction of roads, railway lines, airports for public use or gas network facilities. By analogy to the judgment of the Voivodeship Administrative Court in Szczecin, the discussed provision imposes the obligation to establish a RUA if the post-implementation analysis so requires (Voivodeship Administrative Court judgment, 2010).

RUAs are established by legislative bodies of a poviát or voivodeship. The legislator introduced, in Art. 135(3) ELA, a presumption of competence of the poviát council. The only exception when a RUA is established by resolution of a voivodeship assembly is the situation in which it is created on account of the possibility of permanent environmental impact in the understanding of AIEA. One example of such an object is indeed an airport. In the context of competences of territorial self-government bodies and regional governmental administration, it must be noted that until 1 January 2008, the authority empowered to create RUAs for investments excluded from the presumption of competence of poviát or voivodeship legislative bodies was the voivode (Act of 29 July 2005).

The general nature of the discussed local legislative act gives rise to a legal norm governing a certain category of social relations that may arise between the authority and every individual unknown in advance (Malisz, 2001, p. 21). In case of RUAs around airports, the addressees of the provisions are all persons whom the norms may concern. In particular, such norms are binding on every owner of a land property (including perpetual usufructuary of land). Under Art. 135(3a) ELA, the group of residents covered by the legislative act introducing the RUA should comply with a legal regime different than before, imposing restrictions on the scope of use of a property or special technical requirements in respect of buildings.

To conclude this part of the investigations, it is worth pointing out that establishment of a RUA relates, on one hand, to a specific “legalization” of activities conducted in excess of environmental quality standards outside the facility’s property and, on the other one, to the possibility of imposing

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restrictions on the use of properties by setting out respective prohibitions and requirements in the RUA. It also should not be forgotten that the purpose of protecting human life and health by the introduction of RUA is achieved also by reimbursement of costs incurred on the adjustment of buildings to the above noise insulation requirements (Art. 136 (3) ELA). If a RUA imposes concrete restrictions on the use of properties (e.g. prohibition of development, expansion, etc., of specific property types), this may give rise to claims for repurchase or the airport's compensatory liability. Such possibility is suggested by Art. 129(1) ELA, providing that if, as a consequence of limiting a property's use, the current use of the property or its part or its use according to its current purpose has become impossible or substantially impeded, the property's owner may claim repurchase of the property or its part. Moreover, the possibility to seek compensation is allowed under Art. 129(2) ELA where as a result of limiting a property's use a damage arose, which may also assume the form of reduction of the property's value. It is noteworthy that the cited legal provision exactly specifies the circumstance under which the claim may be asserted. It is not the fact of RUA's introduction but imposition of specific restrictions on the use of properties (Habdas, 2020, p. 14). The scope of such restrictions follows from the resolution, indicating the properties in respect of which restrictions in terms of use are imposed, which, in case of RUAs around airports, most frequently involves limitations to the possibility of new housing development or new sensitive development (i.e. hospitals, nursing homes, housing relating to permanent or temporary stay of children or youth). Therefore, according to the currently applicable legal regime, it cannot be maintained that the use of a particular property has been limited if no prohibitions or requirements provided in the RUA relate to the property. As pointed out above, in case of RUAs around airports, restrictions on the use of properties assume the form of concrete prohibitions in respect of the future assignment of land for particular purposes (e.g. residential housing) or the use of properties (e.g. prohibition of expanding the existing residential housing) or a possible requirement of the buildings' conformity with appropriate technical standards (Habdas, 2020, p. 14). Therefore, in the following part of the article, I will offer an analysis of the existing RUAs that impose restrictions on the use of residential properties in the direct proximity of airports which may give rise to claims under Art. 129 ELA.

### **ANALYSIS OF RUAs AROUND AIRPORTS**

At the time of preparing this article, in Poland, there were sixty-four civil airports (Airports Register, 2020), including the fourteen largest airports for

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public use<sup>5</sup>, and eighteen military airports (Airports List, 2019). The operation of thirty-five airports was classified as significantly burdensome, and only for eleven ports RUAs have been created<sup>6</sup>. It should be stressed that, nonetheless, there are twelve local legislative acts (voivode regulations and voivodeship assembly resolutions) in that area since the military airport in Królewo Malborskie is situated in the territory of two voivodeships – Pomorskie and Warińsko-Mazurskie, which necessitated establishment of two separate areas (Resolution XXVII/624/17, Resolution 334/XXXII/17).

Particular local legislative acts governing RUA have their own distinctive specificity. It is manifest both in the method of delimiting the RUA's borders, the number of zones created and, first and foremost, in the scope of restrictions imposed. During the present research, all RUAs were subject to general analysis in terms of their diverse status in the classification of the intervention's economic consequences, having regard to the allocative elements that may give rise to claims for compensation. I have focused on the question of actual loss relating to the reduction of property value.

From the point of view of conformity of the local legislation with the provisions of ELA, it was necessary to assess proper differentiation in the resolutions creating RUAs of the elements indicated by the legislator, namely: land use function (assignment), uses of land and technical requirements relating to buildings. The distinction between the three elements is connected with the difference of addressees of the particular interventions. According to the legislator's intention, restrictions relating to land use functions are addressed to municipalities. On the other hand, provisions on the use of the terrain and specific technical requirements for buildings are addressed exclusively to property owners. In this respect, it must be concluded that the legislative bodies in voivodeships (or voivodes) did not adopt uniform interpretation of the legislator's requirement concerning the composition of local legislative acts. In the RUA resolutions for the airports in Warsaw, Modlin Cracow, Malbork and Gdańsk, restrictions addressed to the territorial self-

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<sup>5</sup> Certificate following the requirements laid down in the provisions adopted under Art. 59a(5) of the Act of 3 July 2002 – Aviation Law. (Frederic Chopin Airport in Warsaw, Bydgoszcz, Lech Wałęsa Airport in Gdańsk, Katowice – Pyrzowice, Kraków – Balice, Łódź, Poznań – Ławica, Rzeszów – Jasionka, Szczecin – Goleniów, Warszawa/Modlin, Wrocław – Strachowice, Zielona Góra - Babimost, Lublin, Olsztyn-Mazury).

<sup>6</sup> Military Airport Poznań Krzesiny in Poznań, Mikołaj Kopernik Airoport in Wrocław-Strachowice, Frederic Chopin Airport in Warsaw, John Paul II Airport in Kraków-Balice, Henryk Wieniawski Airport in Poznań-Ławica, Warszawa-Modlin Airport, International Katowice Airport in Pyrzowice, Łask Military Airport, Powidz Military Airport, Lech Wałęsa Airport in Gdańsk, Military Airport in Królewo Malborskie.

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government unit and to property owners were contained in the same provision. As regards the resolution establishing RUA KTW, the three types of intervention were introduced in one paragraph. On the other hand, the correct legislative technique was adopted by the authors of the RUA resolutions for the airports in Łask, Powidz, Poznań (Ławica) and Wrocław since restrictions on the land use function (assignment), use of the terrain and technical requirements were contained in separate provisions.

Another composition of the discussed elements was provided by the Wielkopolskie Voivode in the regulation establishing RUA KRZ. In this legislative act, provisions refer to an Annex in the form of a table in which the requirements were made specific under Art. 135(3a) ELA and the Regulation of the Minister of Environment on admissible noise levels in the environment. Interpretation of the local legislative acts indicates that, as a rule, the restrictions were imposed as specified in the provisions of the Regulation of the Minister of Environment of 14 June 2007 (hereinafter: Regulation). A simple conclusion may be drawn that the authors of the discussed local legislative acts transposed those provisions. However, the wording of the provisions, deviating from the legislator's intentions, may cause difficulties in identification of the addressee of the restrictions. That is why, for the purposes of this article, I have first juxtaposed RUAs in which limitations were introduced in terms of land use function and the use of the terrain for residential purposes.

In the analysis of the resolutions in respect of the uses of the terrain and assignment of land for residential purposes, the following marking was used:

1) As regards restrictions (on the owners) of the use (OSK) on account of development prohibitions, according to aggregated markings:

- OSK\_ZM\_GM – i.e. prohibition of residential development on residential land relating to residential buildings – single-family, multi-family, mixed, household and others, as laid down in the resolutions,
- OSK\_NZM\_GM – i.e. prohibition of new residential development on residential land – single-family, multi-family, mixed, household and others, as laid down in the resolutions;

2) As regards restrictions (on the municipality) of the land use function on account of prohibitions relating to specific development types, according to the aggregated markings:

- OPT\_GM – i.e. prohibition of assigning land for residential development purposes – residential buildings (BM) – single-family,
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multi-family, mixed, household and others, as laid down in the resolutions;

**Table 1. Restrictions on residential development**

RUA	OSK_ZM_GM	OSK_NZM_GM	OPT_GM
Warsaw AP, zone Z1	no	yes	yes
Warsaw AP, zone Z2	no	no	no
Cracow AP, zone A	no	yes	yes
Cracow AP, zone B	no	no	no
Cracow AP, zone C	no	no	no
Katowice AP	no	yes, except for sharing the residential and other function	yes
Poznań-Krzesiny AP, zone I	yes	no	yes
Poznań-Krzesiny AP, zone II	no	no	no
Poznań-Krzesiny AP, Zone III	no	no	no
Łask AP, zone A	yes, except for sharing the residential and other function, as far as the conditions set out in the local zoning plan or the decision on land development conditions are fulfilled	no	yes
Łask AP, zone B	no	no	no
Poznań-Ławica AP, internal zone	no	no	no
Poznań-Ławica AP, external zone	no	no	no

Source: own work based on RUA WAW, RUA KRK, RUA KTW, RUA KRZ, RUA LAS, RUA LAW.

The analysis carried out revealed that only in five RUAs the regional legislator introduced restrictions on housing development. Except for RUA KTW, this intervention does not relate to the entire areas but only to their internal zones. At this point another distinction must be made between two

types of restrictions relating to the terrain's use for residential purposes. The former involves a prohibition of housing development, which means ban on constructing new civil structures as well as reconstruction, expansion or upward expansion of existing civil structures (RUA KRZ, RUA LAS). The latter type of restrictions relates to erection of new civil structures for residential purposes (RUA WAW, RUA KTW, RUA KRK). This means that in those cases the authors of resolutions permitted reconstruction, expansion and upward expansion in the understanding of Art. 3 item 6 CLA in relation to already existing structures.

**Table 2. Differences in the meaning of restrictions on property use**

Object of the prohibition	OSK_ZM_GM	OSK_NZM_GM
Construction of a new structure	Applicable	Applicable
Reconstruction, expansion, upward expansion of a new structure	Applicable	Applicable
Reconstruction, expansion, upward expansion of an existing structure	Applicable	Not Applicable

Source: own work.

Another stage of the analysis is the presentation of the restrictions imposed in particular RUAs:

**Table 3. Restrictions under RUA**

AREA	OSK_G_GM	OPT_GM
RUA WAW	Ban on locating buildings with the following functions: residential, residential and tertiary, household, collective residence, hospital, nursery home, functions relating to permanent or temporary stay of children or youth.	Ban on assigning land for the following types of development: housing, single- and multi-family, residential and tertiary, household, collective residence, relating to permanent or temporary stay of children or youth, hospitals and nursery homes.
RUA KRK	Ban on locating and construction of new structures with the following functions: residential, single- and multi-family, household and collective residence, residential and tertiary.	Ban on locating and construction of new structures with the following functions: residential, single- and multi-family, household and collective residence, residential and tertiary.

<b>RUA KTW</b>	Ban on construction of new residential buildings. In the restricted use area it is admissible to change the use of buildings in whole or in part to residential purposes and to construct new residential single-family buildings in combination with other functions, subject to the fulfilment of the requirements in respect of building technical standards.	Ban on assigning new land for housing development.
<b>RUA KRZ</b>	Ban on construction of residential buildings.	Ban on assigning land for the construction of residential buildings.
<b>RUA LSK</b>	Ban on construction of single-, multi-family and collective residence buildings, household structures, residential and tertiary buildings. It is admissible to change the use of buildings in whole or in part to residential purposes and construct new single-family residential buildings in combination with other functions, on the terms specified in the local zoning plan, and in the lack of a local zoning plan on the terms set out in the decision on land development conditions.	Ban on assigning land for residential housing, single- and multi-family, household and collective residence structures, as well as residential and tertiary housing.

Source: own study based on para 5 RUA WAW, para 5 RUA KRK, para 4 RUA KAT, Annex 3 to RUA KRZ, para 8 and para 9 RUA LSK.

Restrictions on residential development in the analysed RUAs were imposed only in their internal zones, i.e. zones bordering the airport area. Such zones were delimited in the following ways:

- in RUA WAW, restrictions were imposed only in the Z1 zone, delimited on the outside by isoline of a measurable sound level of 55 dB at night-time, and on the inside the zone borders the airport,
- in RUA KRK, the Zone A was delimited on the outside by the maximum reach of a night noise isoline of LN = 50 dB or noise isoline LDWN 60 dB, and on the inside the Zone borders the airport,

- in RUA KTW (the area has not been divided into zones), restrictions apply in the entire area delimited on the outside by the reach of an equivalent sound level curve of  $LA_{eqN} = 50$  dB for the night-time,
- in RUA KRZ, the internal zone I was delimited on the outside by an envelope of the line where the admissible long-term average A sound level generated by starts, landings and overflights of aircraft equals 60 dB and the line where the admissible long-term average A sound level generated by ground operations and other noise sources relating to the airport's operation equals 55 dB,
- in RUA LSK, the internal A zone was delimited on the outside by isoline of an equivalent sound level of  $L_{aeqD}=60$  dB and  $L_{aeqN}=50$  dB.

Despite similar methods of delimiting the borders of the RUAs' internal borders, we do not have to do with an identical scope of intervention in relation to residential development. The principal difference can be traced to the wording of the provisions. In RUA WAW, the resolution uses the word "locate" instead of "construct." This means a deviation from the conceptual content of the word "construct" as defined in Art. 3 item 6 CLA. Based on textual interpretation of the word "locate," it must be concluded that the regional legislator's intention was only to restrict the possibility of locating new civil structures in the given area (PWN Dictionary). On the other hand, the resolution permits reconstruction, expansion, upward expansion of already existing structures. An identical scope of restrictions was introduced also in RUA KRK.

A different approach to the formulation of restrictions was presented in RUA KAT, where the intervention of the ban on locating new residential buildings became relative since a simultaneous accompaniment function (e.g. services), along with the fulfilment of building technical standards, exempts a given property from the resolution's legal regime. It is important that the abovementioned local legislative act does not introduce any definition of such other function, and so it must be concluded that the criterion is fulfilled by any type of business activity conducted on the property.

The most extensive scope of restrictions was introduced in RUA KRZ and RUA LSK. Those relate both to the existing and new residential housing. The authors of the resolution did not introduce a distinction between the legal regime of already existing residential buildings and the legal regime dedicated to new investments. Importantly enough, in case of RUA KRZ, the prohibition of construction in the understanding of Art. 3 item 6 CLA is absolute, whereas the restrictions in RUA LSK are relative since the authors of the resolution permitted a derogation from the restrictions if the buildings, at the same time, perform a function other than residential (e.g. services), on the terms

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prescribed in the local zoning plan or in the decision on land development conditions.

It is worthwhile to compare the abovementioned examples of restrictions in the assignment and use of land for residential purposes with the regime of RUA LAW, which does not impose any restrictions on residential development. The choice of RUA LAW can be justified by the fact that, in spite of the absence of such restrictions, one can observe activeness of property owners wishing to exercise the rights under Art. 129 ELA. However, it must be emphasized that the claims sought are groundless since para 8 item 2d RUA LAW provides only for the requirement that buildings comply with acoustic technical standards. Such requirement applies only in the internal zone, whose border on the outside was delimited by the envelope of the isoline of an equivalent A daytime sound level of  $LA_{eqD} = 60$  dB and night-time  $LA_{eqN} = 50$  dB, generated by starts, landings and overflights of aircraft, and the isoline of an equivalent A daytime sound level of  $LA_{eqD} = 55$  dB and night-time  $LA_{eqN} = 45$  dB, generated by other noise sources resulting from the airport's operation. On the other hand, on the inside, the zone borders the airport's area.

In the same way, the authors of RUA LAW have not introduced any restrictions on the right of ownership or the municipality's planning authority in respect of residential buildings in any of the two zones delimited. The only precondition to the possibility to locate residential housing in the internal zone is to ensure proper acoustic comfort in premises requiring acoustic protection. Therefore, it is possible to construct a new residential building. Such construction should involve the use of technical solutions ensuring compliance with the sound level corresponding to the applicable Polish Standards in the area of building acoustics. In case of higher construction costs resulting from the need to follow the imposed technical standards, and in case of acoustic renovations or change of the building's function to residential, Art. 136(3) ELA will apply, in which provision the legislator decided that the costs incurred for the purpose of satisfying technical requirements (even if they are not compulsory) shall be covered by the airport.

### **RESULTS OF THE ANALYSIS OF RUAs AROUND AIRPORTS**

In the context of the presented local legislation, it must be pointed out that only in five resolutions establishing RUAs around airports the legislators have both interfered in the municipality's planning authority and restricted the ownership right of property owners in respect of residential development. As far as the municipality's planning authority is concerned, it should be stressed once again that land management belongs to the catalogue of the

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municipality's own tasks. This means that municipalities enjoy autonomy in the definition of spatial relations set out in the local zoning plan (Niewiadomski, 2008, p. 27). However, as pointed out by A. Miller, such independence is not absolute (Miler, 2012, p. 210). Under Art. 7 of the Constitution of the RP, public administration bodies function on the basis of, and within the limits of, the law. That is why the abovementioned Art. 73(1) item 2 ELA will apply, in which the legislator underlines that territorial self-government authorities, when preparing the local zoning plan or delivering a decision on land development conditions and site management should take into account the specific legal regime introduced by RUAs. Disregard of this principle will result in an unlawful act of public administration and, in the same way, will imply invalidity of the municipal council's resolution adopting the local zoning plan in whole or in part.

Restriction of the municipality's planning authority is also apparent at the following stages of the procedure for the initiation of construction or reconstruction of a structure. At this point, the restriction of the municipality's planning authority "meets" the restriction of the right of the property's ownership since the party planning an investment must obtain a construction permit decision or report that fact to the architectural and building administration (Arts. 28, 29 and 30 CLA.). However, in the provisions of the CLA, the legislator also stressed the essence of RUAs by making dependent the delivery of such decision or acceptance of the report on the investment's compliance with the terms of the local zoning plan, decision on land development conditions, other local legislative acts, including RUAs (Kosicki, 2019). Other than that, delivery of a construction permit decision or acceptance of the report is inadmissible in the light of the legal provisions on environmental protection (Circuit Court judgment, 2016).

In the assessment of a possible restriction on the right of ownership, it is important to establish the scope of damage subject to compensation and the preconditions that must be met for the liability to arise on the part of the entity whose activities gave rise to the restrictions imposed in the RUA to redress the damage (Habdas & Konowalczyk, 2018, p. 17). In the first place, attention should be drawn to the wording of the prohibition relating to the use of a property. Restrictions relating only to the construction of new structures will not affect the already existing buildings. On the other hand, such limitation will be important to a non-developed property which, in the absence of the restrictions imposed, could be assigned for residential housing (Habdas, 2020, p. 12). However, it should be noted that the prohibition to construct a new residential structure may indirectly affect a plot of land developed for residential purposes if it meets the preconditions to separating another

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cadastral parcel in the understanding of Section III, Chapter 1 of the Real Estate Management Act. In such situations damage may be caused by the restriction on the property's use in the form of its impairment loss. It will be essential, however, to specify the property's physically possible uses (e.g. tertiary, industrial development, etc.) since the highest value of a property is determined by its optimum use (Habdas, 2020, p. 12). As a result, the assessment of the impact and nature of the intervention under the local legislation will be important from the point of view of qualifying the damage within the framework of Art. 129 ELA, since where the current use has become impossible or significantly impeded, the legislator envisaged in paragraph (1) a special claim for the property's repurchase. On the other hand, where the imposition of a restriction on a property's use led to reduction of its value, it is possible to seek compensation. As an example, one can point to a situation of refusal to issue the construction permit decision on account of the restrictions laid down in the RUA even though the owner has a valid decision on land development conditions and site management. On such occasions, in my opinion, we have to do with a material restriction of the right of ownership which might give rise to a claim for the property's repurchase. In the present study it is also worth noting that in the provisions on RUAs, the legislator did not provide for the requirement of evaluating the financial consequences of establishing the area. The lack of economic forecast should be regarded as a true legal loophole not only in the process of establishing RUAs but also in widely understood zoning processes. In this context, attention should be drawn to the requirement of providing a forecast of the financial consequences of an adopted local zoning plan (Regulation of 26 August 2003). The local legislative act in the form of a zoning plan may also introduce a specific legal regime, imposing specific restrictions on property owners. The legislator, recognizing the role of that piece of local legislation in the formation of legal relationships, made the possibility of its adoption dependent on the verification of financial consequences of its provisions. It is a peculiar security of public administration bodies against the emergence of unexpected costs relating, for example, to payment of possible compensations for the consequences of the plan's provisions (Hałdek, Szczepański & Stacherzak, 2011, p. 141). The awareness of the necessity to assess financial consequences of the enacted provisions motivates their authors to responsibly impose any possible restrictions. The purpose is to adopt such a legislative act that not only brings positive spatial effects but also good financial consequences (Czekiel-Świtalska, 2005, p. 90). That is why one should approach with criticism the lack of an analogous solution in the procedure of establishing RUAs. In the light of the above, restrictions are not always imposed adequately and according to

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the legislator's intention. Economic analysis of a planned RUA could also contribute to pointwise specification of the "injured" properties since the authority's intention would be the most reliable (most economical) analysis of the impact of harmful nuisance. In the same way, we could avoid unnecessary restriction to the rights of property owners which, in the light of acoustic standards, would not have to be subject to protection.

### **CONCLUSION**

The Conclusion section should include a general, synthetic summary of the article and the results of the research. The author is expected to provide recommendations for practice, outline research limitations, and point out possible directions for further study.

Analysis of the applicable local legislative acts on RUAs indicates that only in five areas restrictions were put in place regarding the use and assignment of land for residential development. Importantly enough, it should be pointed out that only in one case (RUA KRZ) the restriction of use is absolute as relating both to the existing and planned civil structures. As far as other areas are concerned, the prohibition is relative. Although RUA LAS imposes restrictions on use both in relation to existing and planned buildings, it allows at the same time to exempt investments from the prohibition subject to the terms set out in the local zoning plan or decision on land development conditions and site management. In case of RUA WAW and RUA KRK, the restriction refers only to new housing. The most relative nature seems to attach to the restrictions on use as specified in RUA KTW since they relate only to new housing and the authors provided for the possibility to avoid the restriction by simultaneous use of buildings for residential and tertiary purposes.

Bearing in mind that establishment of a RUA may (but does not have to) involve imposition of restrictions on the use of properties, it is essential to identify and assess the provisions of the resolutions creating RUAs. Then, it is necessary to determine actual restrictions in respect of a specific property and to examine if the damage has occurred. According to the opinion expressed by M. Habdas and J. Konowalczyk (2018, p. 17) this process requires a differential determination of the condition and assignment of the property prior to and upon the harmful event (imposition of new restrictions on the property's use). On that basis, it can be established if there has been a restriction on the property's use as a result of creating the RUA. This is the case since it may not be accepted that the coverage of a given property by a RUA results in the emergence of a specific legal regime in relation to that property if none of the

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restrictions imposed in the resolution applies to the said property. Creation of a RUA is not in itself a circumstance limiting the property's use.

When assessing the efficiency of the imposed restrictions, one should point, in the first place, to the lack of consistent specification of the property owners' legal status. As demonstrated above, RUAs provide for a prohibition to construct new residential buildings, however, the resolutions still permit reconstruction or expansion which, similarly to new development, may contribute to an increase in the number of residents within a RUA zone. As a result, the resolutions do not achieve the objective of protecting human life and health. Another puzzling element are the solutions imposing ban on new residential development with simultaneous exclusion of the restriction in case of combining the residential and tertiary functions. Considering the conciseness of the resolutions' grasp of "services" (tertiary activities), it must be concluded that in the era of popularizing sole proprietorships, such limitation will have an increasingly symbolic meaning. For the sake of completeness, it should be noted that, as shown by practice, the currently applicable restrictions translate, in the first place, to owners' attempts to seek compensation, regardless of whether or not such claims are legitimate.

In conclusion, based on the present considerations, the following conclusions may be formulated:

1. The wording of the provisions of the resolutions establishing RUAs only in four cases offers an appropriate distinction between restrictions on the assignment of properties, their use and technical requirements.
  2. Only five RUAs impose restrictions on residential development and only within such limits the owners of properties assigned for such purpose can take advantage of the right under Art. 129 ELA. However, it must be remembered that the restrictions, except for zone I of the Krzesiny AP, refer to new residential housing, and not to the already existing buildings.
  3. Establishment of a RUA is a public intervention affecting the municipality's independence in the formation of spatial order. Under the provisions of ELA and CLA, local zoning plans, decisions on land development conditions and site management as well as construction permit decisions must be adopted or issued taking into account the RUA's provisions.
  4. RUAs are not drawn up in a sufficiently efficient manner. The cause is, among others, the missing requirement to carry out an analysis of the financial consequences of the special legal regime put in place. Moreover, the analysis of impact of harmful conditions is not carried out
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pointwise but generally, which contributes directly to a decrease in the efficiency of the solutions.

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