Adrianna Miler

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The author has obtained the Ph.D. degree at the Faculty of Law and Administration of the University of Silesia. She is a Kompania Węglowa employee

LIMITED USE AREA AS A LEGAL INSTRUMENT OF ENVIRONMENTAL PROTECTION[1]

1. According to Article 86 of the Constitution of the Republic of Poland of 2 April 1997, (Journal of Laws no. 78, item 483 as amended, further referred to as "Const.") the obligation of environmental protection is of a general nature, which represents, among others, an imperative to respect the standards of its quality. It is not, however, of an absolute character. The instrument, the implementation of which may exclude the application of generally effective environmental quality standards, is the limited use area. In the previous legal status, the similar functions were played by protective zones.

2. The limited use area is a new instrument of environmental protection. It was introduced on 1 January 1998 (see the Act of 29 August 1997 amending the Act on protection and development of environment and amending some other acts, Journal of Laws no. 133, item 885). Over the last few years the area has become a subject of keen interest. This problem has never been studied so far in the literature of the subject. Its legal regulation often raises doubts, which manifests itself in the jurisdiction by Polish courts (see for example the judgement by the Supreme Administrative Court in Warsaw of 4 November 2004, "Orzecznictwo Sądów Polskich" 2005, No. 11, item. 127, pp. 571–573; the decree by the Supreme Administrative Court in Warsaw of 29 September 2009, II OSK 445/09, LEX no. 528872 and the decree of 23 March 2010, II OSK 2032/09, LEX no. 578107).

3. Pursuant to Article 135 of the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws of 2008, No. 25, item 150 as amended, further referred to as „E.P.L." or „Act – Environmental Protection Law") „if it follows from the results of the environmental review or the procedure concerning the assessment of environmental impacts or post project analysis that in spite of using any accessible technical, technological and organisational solutions, it is not possible to meet environmental quality standards outside the plant or another facility, then for a sewage farm, a municipal landfill, a compost pile, a thoroughfare, an airport, a power line or a power station, a radiocommunication, radionavigation and radiolocation installation, an area of limited use is established". It is also established for some other than the above mentioned "old" installations requiring integrated permission (Article 135 para. 6 E.P.L.). The limited use area is obligatorily established around a nuclear facility.

The premises which are essential for the establishment of a limited use area include: lack of possibility to meet environmental quality standards outside the plant or any other facility, in spite of the application of available technical, technological and organisational solutions and the execution of procedures concerning environmental impacts (under the Act of 3 October 2008 on making available of the information on the envi-

[1] This article is an updated summary of the author's PhD dissertation.

ronment and its protection, the participation of the community in the environmental protection and on the assessment of environmental impacts, Journal of Laws No. 199, item 1227 as amended, further referred to as „M.A.I.E.P.") or presentation of the post project analysis or submission of the environmental review results (Górski et al., 2011).

On the basis of Article 3 item 34 E.P.L. „the environmental quality standard" means „admissible levels of substance or energy which may be reached within a specified time by the environment as a whole or its particular natural elements". The admissible levels of environmental quality standards are specified by secondary legislation (see the Regulation of the Minister of Environment of 3 March 2008 on the levels of some substances in the air, Journal of Laws no. 47, item 281; Regulation of the Minister of Environment of 9 September 2002 on soil quality standards and land quality standards, Journal of Laws No. 165, item 1359; Regulation of the Minister of Environment of 14 June 2007 on maximum admissible levels of noise in the environment, Journal of Laws No. 120, item 826; Regulation of the Minister of Environment of 30 October 2003 on maximum admissible levels of electromagnetic fields in the environment and methods of checking adherence to these levels, Journal of Laws No. 192, item 1883; Regulation of the Minister of Environment of 26 January 2010 on reference values for some substances in the air, Journal of Laws No. 16, item 87). Organs establishing a limited use area classify particular amounts occurring within the specific area, e.g. noise in dB, admissible amounts of soil or ground concentration in mg/kg of dry mass, frequency of electromagnetic field in Hz up to its admissible levels, stating any exceedance of environmental quality standards. Even before the establishment of the mentioned area, the competent organ has to collect evidence to prove the existence of the premises for the establishment of such area.

De lege lata the environmental impact assessment is the type of procedure which has an inhomogeneous nature. It aims either to accept (modify) the plans, programmes, strategies or documents of similar character provided by the statue (the so-called strategic environmental impact assessment), or to undertake an individual solution (the so-called assessment of the project's impact on the environment, including the Nature 2000 area). In both cases the assessments may have a trans-border character (Lipiński, 2010: p. 59). Basically, it is possible to set a limited use area around some enterprises which may considerably affect the environment and which require decisions specifying environmental conditions. Planned enterprises which may considerably affect the environment are divided into ones that may:

- considerably affect the environment at all times,
- considerably affect the environment in a potential way.

The types of enterprises which fall into the above mentioned categories are specified by *de lege lata* the regulation of the Council of Ministers of 9 November 2010 on enterprises considerably affecting the environment (Journal of Laws No. 213, item 1397. This regulation has been in force since 15 November 2010).

According to Article 82 para. 1 item 5 M.A.I.E.P. in its decision on environmental conditions the competent organ may impose on the applicant an obligation to submit a post project analysis, specifying its scope and date of submission. The post project analysis contains a comparison of the findings included in the report on the project's impact on the environment and the decision on the environmental conditions with the actual impacts of the project on the environment and the actions taken in order to reduce them (Article 83 para. 1 M.A.I.E.P.). The results of the post project analysis may

supply the administrative organ with information on lack of possibilities to meet environmental quality standards outside the premises of a plant or another facility, despite the application of accessible technical, technological and organisational solutions (Jendrośka, 2001: p. 297).

According to Article 237 E.P.L. "should any circumstances be stated showing a possibility of the installation negatively affecting the environment, an environmental protection organ may, by virtue of a decision, oblige the entity running the installation and exploiting the environment to draft and submit an environmental review" (Ciechanowicz-McLean, Bukowski, Rakoczy, 2008: p. 413).

Pursuant to Article 36f para. 1 Act of 29 November 2000 – Nuclear Law (Journal of Laws of 2007 No. 42, item 276 as amended, further referred to as "N.L.") an area of limited use under Article 135 E.P.L. is established around a nuclear facility on the basis of the rules provided in E.P.L. It should be noted that the rules of establishing a limited use area around a nuclear facility are provided also by Article 36f para. 2–3. In the existing legal status the rules of establishing a limited use area around a nuclear facility were provided by the regulation of the Minister of Environment of 30 December 2002 on specific rules of establishing a limited use area around a nuclear facility indicating any limitations in its using (Journal of Laws No. 241, item 2094, further referred to "S.R.E.").

4. The limited use area is established by virtue of a general act and the competent organ in relation to its establishment is:

- the voivodship sejmik for enterprises which may considerably affect the environment at all times under the Act of 3 October 2008 on making available information on the environment and environmental protection, participation of the community in environmental protection and environmental impact assessments or for plants or other facilities where the installation qualified as such enterprise is exploited,
- the poviat council otherwise.

The Act – Environmental Protection Law does not specify the procedure of establishing the limited use area. It should be noted that this area may be established ex officio or upon application. The competent organ is obliged ex officio to establish the limited use area in the event it is informed of the occurrence of the premises of its establishment. The poviat council (voivodship sejmik) is not bound by the application to establish the limited use area. Additionally, the limited use area is established if the premises included in Article 135 para. 1 E.P.L., Article 135 para. 6 E.P.L. or Article 36f para. 1 N.L. are fulfilled.

5. The source of generally binding law within the area of operation of particular units of territorial authority is also local law (Article 87 para. 2 Const.). E. Ochendowski assumes that acts of local law should be understood as "legal provisions generally binding within the delimited part of the territory of state, and not within the whole area, and only if made by organs of territorial government or territorial organs of government administration" (Ochendowski, 2009: p. 119). Besides, the literature distinguishes the following characteristics of acts of local law:

- possibility of regulating the procedures of any addressee category (or universality of the binding force),
- necessity of express statutory authority to issue a normative act,
- obligation of due promulgation of an act of local law (Ochendowski, 2009: p. 120).

The act establishing the limited use area has a general and abstract character, and its addressees are defined in a general way. A characteristic feature of this act is usually acting within the territorial range covering a part of the poviat (a part of the voivodship). Acts of local law are issued on the basis of legislation and for the purpose of their execution, according to the same rules as implementing provisions made by superior organs of government administration (Article 92 para. 1 Const. regarding Article 94 Const.) and are subject to promulgation in the voivodship journal of laws (Article 13 item 1 and 2 Act of 20 July 2000 on promulgation of normative acts and some other acts of law, Journal of Laws of 2010 No. 17, item 95 as amended).

The preparation of draft resolutions under local law belongs to the scope of responsibilities of the governing body of the poviat (or voivodship). The draft resolution is submitted to the council (or sejmik) during the session by the initiator or another person acting on their behalf. According to Article 88 of the Act of 5 June 1998 on poviat self-government (Journal of Laws of 2001 No. 142, item 1592 as amended, further referred to as „A.P.S.") and Article 91 of the Act of 5 June 1998 on voivodship self-government (Journal of Laws of 2001 No. 142, item 1590 as amended, further referred to as "A.V.S.") "when an organ of poviat (voivodship) self-government does not execute procedures stipulated by law or violates third parties rights through taking legal or actual actions (…) the administrative court may order a supervisory organ to execute necessary actions for the petitioner". It cannot be excluded that any failure to issue the act establishing the limited use area may give rise to liability for damages on the part of units of territorial self-government.

One should also mention the problem of boundaries of the said area as it may happen theoretically that the limited use area was already established but it is very small and beyond its boundaries there occur premises for establishing such area as well. What raises doubts though is the width that the said area should have around a power line or a power station, a radiocommunication, radionavigation and radiolocation installation? Our legal system does not specify any criteria that the organ should use when delimiting the area. Consequently, the delimitation of a metre wide area may represent the fact that the obligation to establish the area as provided by Article 135 para. 1 and 6 E.P.L. and Article 36f para. 1 N.L. The doubt concerns whether the delimitation of an area of this width is reasonable and suits the function it is to perform.

6. In accordance with Article 135 para. 3a E.P.L. an act establishing the limited use area must specify its boundaries, the protection regime to be introduced within the area (limitations in the scope of using real estate, technical requirements for buildings) and the manner of using the grounds resulting from the procedure concerning environmental impact assessment, post project analysis or environmental review.

The act establishing any limited use area must first of all precisely determine the run of the boundaries of the area. Since the establishment of the area is to result in differentiation of legal regimes, determination of its spatial extent of the binding force is a priority. We should assume that when delimiting a limited use area what must be taken into consideration is where environmental quality standards are met, obviously if it is possible to determine exactly. It gives rise to a question of whether an internal division of the limited use area into subareas is acceptable. One of the legal premises for establishing the said area is lack of possibility to meet environmental quality standards. These standards are subject to determination by virtue of relevant secondary legislation which contains differentiation of maximum admissible levels of standards. It se-

ems that such differentiation of maximum admissible levels of standards justifies the internal division of the limited use area into subareas (However, the Voivodship Administrative Court in Warsaw in its judgement of 2 December 2008, IV SA/Wa 1391/08, LEX no. 488010, expressed a view that "Article 135 para. 1 of the Act – Environmental Protection Law, providing for the authority to establish limited use areas outside the plant (another facility) does not give grounds for establishing a limited use subarea within such areas (…) It does not mean, however, that it is not acceptable to differentiate limitations within the limited use area"). Norms of admissible standards are determined in reference to different groups of land designation. Acknowledgement of this solution is found in practice (see e.g.: § 2 Resolution No. LI/1469/10 of the Sejmik of Łódzkie Voivodship of 9 February 2010 on the establishment of the limited use area for Łask military airport, Official Journal of Łódzkie Voivodship No. 88, item 689 and § 5 Resolution No. XXXII/470/09 of the Sejmik of Małopolskie Voivodship of 25 May 2009 on the establishment of the limited area for Kraków Balice Airport, under the management of the John Paul II Kraków Balice International Airport Sp. z o.o., Official Journal of Małopolskie Voivodship No. 377, item 2693).

Pursuant to Article 135 para. 3a E.P.L. organs establishing the limited use area are obliged among others to determine any limitations in the scope of using the real estate within it, technical requirements regarding the buildings and methods of using the real estate resulting from procedures concerning environmental impact assessment, post project analysis or environmental review. By determining the imperatives (prohibitions) the establishing organ must take into account the type and degree (extent) of difficulty which justifies the establishment of a specific area. Introduction of the mentioned limitations is to serve the purpose of mitigating environmental impacts, including protecting the life (health) of people living and staying within the limited use area.

In Article 36g para. 1 N.L. (the amendment of the mentioned article came into force by way of the new Act of 13 May 2011 amending the Act – Nuclear Law and some other Acts, Journal of Laws no. 132, item 766. The latter came into force as of 1 July 2011), the law-maker stated exemplified actions which are prohibited within the limited use area around a nuclear facility. In the previous legal state the Minister of Environment in S.R.E. enumerated actions prohibited within such area around a nuclear facility. It should be stressed that the Minister of Environment enumerating in a regulation actions prohibited within the limited use area around a nuclear facility was inadmissible from the position of the provisions of the Constitution of the Republic of Poland (the introduced amendment of the legal status indicates that the law maker also noticed that the mentioned matter had required statutory regulation).

7. As of 1 January 2008 there was a change in the competence of the organ and legal form of the act establishing the limited use area for an enterprise that might considerably affect the environment, as referred to in Article 51 para. 1 item 1 (it concerned planned enterprises that might considerably affect the environment requiring drafting up a report on the enterprise's environmental impact. See § 2 of the ineffective regulation of the Council of Ministers of 9 November 2004 on the determination of types of enterprises which may considerably affect the environment and specific conditions connected with the enterprise being qualified for the construction of the environmental impact report, Journal of Laws no. 257, item 2573 as amended), or for plants or other facilities exploiting such installation which is qualified as such enterprise. Before 1 January 2008 the mentioned area had been established by the voivod by way of regula-

tion, and as of the latter date the Voivodship Sejmik in the form of resolution (see Article 19 item 5 regarding Article 48 item 2 of the Act of 29 July 2005 on amending some acts in relation to modifications in the division of responsibilities and competences of local administration, Journal of Laws no. 175, item 1462 as amended). Subsequently as of 15 November 2008 Article 135 para. 2 E.P.L. was amended by Article 144 item 21 M.A.I.E.P. According to its new wording "the limited use area for the enterprise which may considerably affect the environment at all times in accordance with Act of 3 October 2008 (…), or for plants or other facilities exploiting the installation which is qualified as such enterprise, is established by the voivodship sejmik by way of resolution."

Referring to § 32 para. 2 of the Appendix to the Regulation of the Prime Minister of 20 June 2002 on "the rules of law making technique" (Journal of Laws No. 100, item 908, referred to as "r.l.m.t."), the editors of the LEX System of Legal Information came to conclusion that since (as of 15 November 2008) the legal grounds for issuing implementing acts by voivods in the form of a regulation on establishing the limited use area have been changed in the manner defined in § 32 para. 2 r.l.m.t., such secondary legislation became invalid. The above presented position raises serious doubts and there are many arguments to justify the fact that this view is lacking legal grounds.

8. In accordance with Article 14 para. 8 Act of 27 March 2003 on Planning and Spatial Development (Journal of Laws No. 80, item 717 as amended, further referred to as "A.P.S.D.") the local plan of spatial development is an act of local law generally binding within a given area. However, the mentioned plan must consider some specific conditions of other solutions shaping the use of the site (Article 73 para. 1 E.P.L.). This may include for example such solutions as establishing a limited use area, an industrial zone. Whenever there is no local plan, its function is taken over by the decision on the condition of construction and site development. The latter decision must also be in agreement with other settlements determining the designation of the site (Jendrośka, Jerzmański, 2011).

9. If, as a result of the establishment of the limited use area, there is no possibility (substantial limitation) of using this real estate (or its part) in the previous manner (in accordance with the existing use), then its owner (owner of the right of perpetual usufruct) may demand redemption of their right (Rotko, 2002: p. 131). If compliance with the protection regime which is binding within the limited use area results in any limitation of using such real estate (its part), then the owner (owner of the right of perpetual usufruct, person entitled to the substantial right to real estate) may claim damages from the entity whose activity caused the necessity of establishing such area. (Article 129 para. 2 and para. 3 E.P.L.).

According to Article 136 para. 2 E.P.L. the claim for redemption or damages is lodged against the entity whose activity caused the introduction of some limitations as a result of the establishment of the limited use area. Some doubts may be raised about the determination of the debtor against whom the claim for redemption is to be lodged. On the basis of Article 135 para. 1 E.P.L., the limited use area is created among others for thoroughfares on condition that the premises specified in this provision are fulfilled. This is exemplified by the Katowice–Kraków motorway. Basically, the competent organ in respect of establishing the limited use area is the poviat council. The owner of the land below the said motorway is the State Treasury, but on the basis of a licence (in 1997 the Minister of Transport and Maritime Economy granted Stalexport S.A. for a period of 30 years licence for the adjustment of the A-4 motorway to toll collection

and its exploitation. See: http://www.autostrada-a4.pl/index.php?gid=34. Pursuant to Article 61 para. 1 of the Act of 27 October 1994 on toll motorways, Journal of Laws no. 127, item 627 as amended, "minister of transport and economy concludes with the licensee a licence agreement". The licence agreement is in fact an element of the licence, thus an administrative decision), it is exploited by Stalexport Autostrada Małopolska S.A. It gives rise to the question of how we should understand the term of "one whose activity caused the introduction of some limitations". No answer is found in the language interpretation of the notion of "activity". It is defined as "a group of actions taken for a definite purpose, to a certain extent, active participation in something; acting, working" (Komputerowy Słownik Języka Polskiego, Vol. I, Wydawnictwo Naukowe PWN, Warszawa 2004). In particular, it is not clear whether the entity whose activity caused the introduction of some limitations in relation with the establishment of the limited use area is the entity which constructed and administers or only administers the motorway or those who use this public road. Similar doubts may be connected some other facilities around which the limited use area is to be established. The wording of Article 136 para. 2 E.P.L. is misleading. However, it seems that the debtor according to this provision may be one who exploits a given facility or runs an activity which aims at using it (as for the current legal status see judgement of the Superior Administrative Court of 17 March 2009, II OSK 1195/08, LEX no. 525853).

Following Article 158 of the Act of 23 April 1964 – Civil Code (Journal of Laws No. 16, item 93 amended, further referred to as "C.C."), transfer of ownership of real property is subject to notarial deed. Failure to observe the requirement of this form entails invalidity of the act in law (Article 73 § 1 C.C.). In light of Article 237 C.C. as to transfer of the right of perpetual usufruct, the provisions of ownership transfer apply. The contract of sale must specify at least the subject of sale and the price or the value of redemption of the real estate (its part). The latter elements must be determined by the parties themselves. According to Article 136 para. 1 E.P.L. any disputes in relation to redemption of real estate (its part) are resolved by common courts of law. In relation to claims for damages the debtor and the creditor may conclude an agreement specifying the amount of damages, the method and date of payment. Suing for damages in respect of the injury under consideration is possible only when the amicable settlement procedure has been exhausted.

10. Under Article 78 para. 1 A.P.S. (Article 81 A.V.S.) the starosta (or voivodship marshal respectively) is obliged to submit to the voivodship the resolution of the poviat council (voivodship sejmik), within 7 days of the date of taking it. The resolution (part of the resolution) of the poviat organ (organ of the voivodship self-government) incompatible with the law is invalid. Whether the mentioned resolutions are invalid is to be resolved by the voivod as a supervisory organ not later than 30 days of delivery of the resolution. The supervisory settlement by the voivodship is subject to judicial review of the administrative court. Unless the voivod has asserted the invalidity of the resolution within 30 days of its delivery, the resolution (its part) may be appealed to an administrative court.

A question arises: while conducting the judicial review of the act establishing the limited use area, can the administrative court examine the substantial and legal premises necessary to issue this act? No possibility of meeting environmental quality standards is one of the premises for the establishment of the limited use area. Basically, since Article 135 para. 1 E.P.L. specifies the premises for issuing such an act, they are subject to

judicial review, because otherwise the review by an administrative court would be apparent. For example, the resolution regarding the approval of the local spatial development plan must be preceded by a complicated procedure (for detailed information on it see Article 17 – 20 A.P.S.D.) and it must be well documented. In reference to the act establishing the limited use area there is no determination of any preceding procedure and manner of documenting it. Undoubtedly, the evidence proving that the mentioned environmental quality standards were exceeded is in fact a directive to issue the act. In order to state that the standards have been exceeded the establishing organ must collect relevant documents to prove it.

11. The Act – Environmental Protection Law does not contain any legal regulations regarding the removal or change of boundaries of the limited use area. It should be noted that the particular so-called field forms of environmental protection are created and removed by the same organs by way of acts of the same legal status. At the same time the law maker determined the premises for their removal. Since in the latter situation competent are actually the same organs which execute it by way of acts of the same legal character, so inferring *per analogiam* organs with statutory authority to establish limited use areas in the form of acts of local law they are also competent to remove or change their boundaries. *De lege ferenda* this doubt must be clarified.

12. In the doctrine it is assumed that a special area is "part of the state's space within the borders of which (…), by virtue of a special legal act a special, i.e. different from what is in force within the whole are of the country, system of legal norms is established aiming to ensure, i.e. enable or facilitate the implementation of the state's priority goals and objectives within a given area" (Stelmasiak, 1986: p. 66; Wasilewski, 1969: p. 118). The idea of the so-called special area boils down to embrace a separated space of the state with a specific legal regulation. It is important to note an enormous differentiation of the competences of organs establishing the so-called special areas and legal forms of their activity. Some of the special areas are created by virtue of individual acts. What is noticeable is extremely differentiated legal effects as a consequence of the establishment of particular so-called special areas. The literature distinguishes three most characteristic legal consequences of the establishment of the so-called special area, namely: limitation of ownership rights and other substantial rights, public (administrative) burdens and various kinds of police and administrative regulations in the strict sense. Different kinds of the so-called special areas, apart from its cognitive value, also emphasise the diverse character of the legal institutions which can be contained within the framework of this concept. Views on the distinguishing of the so-called special area are diverse, and it is difficult to assess their usefulness because of the ever changing legal status (for instance related with the determination of the procedure of establishing such areas). Accepting the concept of the so-called special area would mean that the catalogue of such areas might be extremely extensive at present. Undeniably, in many areas there is in force an unusual, different from general legal order which might be termed as the so-called special legal regime. A frequent use of the concept of the so-called special area may lead to a paradoxical conclusion that the territory of the whole country is in fact made up of these special areas only. Practically, the discussed construction is of a limited use. The mentioned concept may have a theoretical and organisational value, but its pragmatic consequences are doubtful.

13. Additionally, Polish law provides for yet another, apart from the limited use area, instrument, the implementation of which may lead to the exclusion of generally bin-

ding environmental quality standards. It is the industrial zone. The premises for its establishment include:

- the existence of the local plan of spatial development of the area covered by the planned zone and the designated use of the area according to the plan for the manufacturing, storage and warehousing activity,
- the use of the zone area in accordance with its designated use as specified in the local plan,
- lack of possibility to meet environmental quality standards and reference values outside the premises of the plant (another facility), in spite of using accessible technical, technological and organisational solutions.

According to Article 136c para. 1 E.P.L. the industrial zone is established upon application of the land surface owner (Gruszecki, 2011). An essential element of the application for the establishment of the industrial zone is the results of environmental review of the installations exploited within the boundaries of the planned industrial zone. Details connected with the content of the application for the establishment of the industrial zone can be omitted. The competent organ authorised to establish the industrial zone is the voivodship sejmik acting by means of resolution being an act of local law. The act establishing the industrial zone determines:

- its boundaries,
- the kinds of activity, the performance of which is admissible within the area of the industrial zone due to the possibility of occurrences of exceedances of environmental quality standards (reference values).

The procedure aiming at establishing the industrial zone is not included in the objective scope of procedures regarding environmental impact assessment, neither is it included in the category of "procedures requiring the participation of the community".

It is indisputable that the act establishing the industrial zone may shape ownership in the scope of the method of using the real estate (its part). If, in relation to the introduced limitations further using the real estate (its part) has become impossible (substantially difficult), the owner of the real estate (owner of the right of perpetual usufruct) may claim redemption of the real estate or its part (Article 129 para. 1 regarding para. 3 E.P.L.). In accordance with Article 129 para. 2 regarding para. 3 E.P.L. is the introduction of any limitation of a method of using the real estate results in damage, then the owner (the owner of the right of perpetual usufruct or the person entitled to the property right to the real estate) may claim damages for the sustained damage to the full amount (*damnum emergens* and *lucrum cessans*). In principle, the land surface owner(s) expressing consent to have their real estate embraced by the boundaries of the future industrial zone excludes any claim for damages or redemption of real estate referred to in Article 129 para. 1–3 E.P.L.

It must be noted that there are some similarities between the two previously discussed instruments of environmental protection. *De lege lata* the fact that there is no possibility of meeting environmental quality standards outside the site of the plant (other facility), in spite of using accessible technical, technological and organisational solutions is one of the essential premises for establishing the industrial zone (limited use area). In the case of the industrial zone meeting the latter requirement must be indicated in the justification of the need to delimit the mentioned area attached to the application for its establishment. (Article 136c para. 2 item 1 E.P.L.). In reference to the limited use area fulfilling this premise must result from the results of the environmental

review or the assessment of enterprise's environmental impact stipulated by the provisions of the Act of 3 October 2008 on making available information on the environment and its protection, participation of the community in environmental protection and environmental impact assessments or from a post project assessment (Article 135 para. 1 E.P.L.). The acts establishing the industrial zone and the limited use area have a general character. They are partly similar in respect of the competent organ authorised to establish both forms of environmental protection discussed above. The industrial zone (the limited use area for the enterprise which may considerably affect the environment at all times according to the interpretation of the Act of 3 October 2008 on making available information on the environment and its protection, participation of the community in environmental protection as well as assessment of environmental impacts, either for plants (facilities) with the installation qualified as such enterprise is exploited) is created by the voivodship sejmik in the form of resolution. The content of the acts establishing the industrial zone (limited use area) shows some similarities. In both cases it is necessary to determine their boundaries. It is indisputable that, if the act allows for the establishment of a zone (area), on which there must be in force a legal regime which is independent of the existing one (imperatives and prohibitions), it is necessary to determine their boundaries precisely.

14. Comparing the legal regulation of the limited use area with the areas and facilities covered by protection on the basis of the Act on environmental protection: the national park buffer zone, water intake protection zone and inland waters protection areas showed that there are no institutions in our legal system that can be compared to the limited use area.

15. Having analysed the instruments of legal environmental protection and water protection zones in German law and the solutions contributing to the legal environmental protection in Slovakia and the Czech Republic in terms of searching for an instrument which is similar to the limited use area, one should conclude that the said instrument of environmental protection has a domestic character (Radecki, 2010).

16. The analysis of acts establishing areas of limited use provides numerous examples showing that some of them are created in violation of the law, even with gross disregard for the law. Doubts refer to, for example, the regularity of the establishment of the limited use area for the "Rypin" Municipal Waste Utilisation Plant in Puszcza Miejska, gmina Rypin (Resolution No. XXXIII/205/2001 Poviat Council in Rypin of 30 November 2001, Official Journal of the Kujawsko-Pomorskie Voivodship of 2002 No. 8, item 179. The area was removed as of 30 June 2003) or for the military complex in Pietrzykowice (Cf. § 1 Regulation of Dolnośląskie Voivod of 8 January 2003 on the establishment of the limited use area, Official Journal of the Dolnośląskie Voivodship No. 3, item 71 as amended).

17. *De lege ferenda* we should move for:

a) introducing legal possibility to establish the limited use area around:
- other than municipal landfills,
- facilities causing exceedance of admissible levels of noise,
- odour emission sources,

b) including in legislation criteria for the relevant organ to follow while determining the run of boundaries of the mentioned area,

c) introducing legal regulation according to which the act establishing the limited use area might settle about the debtor, which would allow to get rid of misunderstanding with trying to identify the other party of the claim for damages or redemption,
d) need to determine by means of legislation the premises for removing the discussed area.

The above presented notes have a character of example proposals *de lege ferenda*. It appears that their consideration might have a positive influence on the legal regulation of the limited use area.

18. The conducted analysis of issues connected with the limited use area allows to put forward some conclusions. First of all, it should be ascertained that the normative status in this respect is incomplete.

The method of regulating the legal premises for establishing the limited use area can hardly be considered satisfactory. In the present legal status there is no determination concerning the kind of documents, from which information should be taken into account in the decision on environmental conditions, post project analysis and environmental review as well as detailed content of such documents.

For the sake of practice it is essential to precisely delimit the said area. It should be stressed that the boundaries of each limited use area should be determined in a precise and indisputable manner. It is unacceptable for the organ establishing the limited use area to use such terms as "approximately" or "about" while determining its area.

Since the consequence of the establishment of the limited use area are some limitations of using real estate (its part), and it does not follow from any legal act that they must be identical, it is obvious that there may be boundaries of these different limitations, and hence the "subzones".

Regulations by voivods establishing areas of limited use issued prior to 15 November 2008 remain in force.

Along with the change of legal status concerning the problems of limited use area there should be an improvement of the application of law in this respect. Some existing solutions are applied in an unacceptable way.

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