

## Taking of Evidence in the Form of a Valuer's Expert Opinion in Court Proceedings for the Compensation for Restrictions on Use of Land in the Light of the Public Intervention Made under Restricted Use Area (RUA) Resolutions - National Research Results

Marcin Tomecki<sup>1</sup>

<sup>1</sup> *University of Economics in Katowice, Poland, ORCID: <http://orcid.org/0000-0003-4121-1157>, [marcin.tomecki@ue.katowice.pl](mailto:marcin.tomecki@ue.katowice.pl)*

ABSTRACT	
<p>Purpose – The purpose of this article is to evaluate regularity of formulating evidence theses ordering expert opinion for the purpose of determining the compensation for value impairment of residential properties located in airport RUAs under Art. 129(2) in conjunction with Art. 135 ELA, in the context of the implemented state intervention as per appropriate RUA resolutions restricting the use of immovable properties.</p> <p>Design/methodology/approach – This article contains considerations of theoretical nature, made in two areas: law and economy. Such considerations, as a whole, are summarized by the results of an empirical research carried out in the years: 2019–2020. The research was carried out for five national airports, namely: Gdańsk Airport (AP), Katowice AP, Cracow AP, Poznań AP, Warsaw AP. In the investigation, the case study method was used. For the purpose of empirical research, national airports provided documentation for 33 court proceedings, covering, among others, the total of 49 evidentiary rulings. The investigation involved as well analysis of the provisions of Resolutions establishing restricted use areas for the examined airports.</p> <p>Findings – The implemented research offers practical conclusions addressed to airports, courts adjudicating in compensation matters and valuers. The results of the conducted research point to mistakes made by the adjudicating panels in compensation matters for the value impairment of immovable properties located in airport RUAs as far as formulation of evidence theses for expert witnesses is concerned, consisting in non-indication or non-specification of the restriction of use in respect of a given immovable property as a part of the intervention implemented by the state, and allowing expert witness opinions in the lack of public intervention.</p>	
<b>Keywords:</b>	restricted use area; RUA; evidence thesis; public intervention; restriction on use
<b>JEL codes:</b>	K320, K110, D04
<b>Article type:</b>	research article
<b>DOI:</b>	10.14659/WOREJ.2021.117.04

## INTRODUCTION

One of the forms of public intervention provided for in the Polish legal system is the creation of a restricted use area for an airport under the provisions of the Environmental Law Act (ELA). In the Polish conditions, that intervention became a ground for commencing many court proceedings in which property owners sought compensation from airports under the provisions of Art. 129, Arts. 135-136 ELA in conjunction with appropriate rules of local law. Such proceedings raised many controversies in respect of the following questions: legitimacy of claims, including their amount, for which the key piece of evidence were expert opinions prepared by valuers.

The main reason for undertaking the research were the results of a previous study on the methodology of appraising real estate (Valuation Methodology, 2018), which provided information on the amounts of compensatory claims asserted against five airports in Poland, and the results of a pilot research of evidence theses, which provided information on inconsistencies between the contents of evidence theses and the legal basis of the claim sought, which had an impact on the methodology of valuers' work and implementation of the assumptions of the state intervention. Another motive for the research was a research gap observable in that regard.

The research problem taken on in this article is formulation of evidence theses in the context of the intervention pursued by the state with regard to restrictions on use of immovable properties within RUAs, and the preconditions to the admissibility of an expert opinion taken from a valuer in pending court proceedings for compensation resulting from a restriction of use of an immovable property as a part of public intervention implemented under the provisions of a Resolution establishing a RUA.

The purpose of this article is critical evaluation of the formulation of evidence theses ordering expert opinion from a valuer for the purpose of determining the compensation for value impairment of residential properties located in airport RUAs under Art. 129(2) in conjunction with Art. 135 ELA, in the context of the adopted assumptions of the state intervention, as expressed in RUA Resolutions. The evaluation carried out was limited solely to the assessment of regularity of the specification of harmful event, in the light of the contents of the public intervention as provided for in RUA Resolutions, and of the admissibility to take evidence in the form of a valuer's expert opinion.

The research was conducted in the period 2019-2020 for five national APs, using the *case study* method. The scope of analysis covered 49 expert opinions specifying value impairment of immovable properties, out of which: 16 in relation to the Warsaw AP RUA, 12 in relation to the Cracow AP RUA, 8

---

in relation to: the Gdańsk AP and Poznań AP RUAs, and 5 in relation to the Katowice AP RUA, as well as the contents of court evidence theses and respective RUA Resolutions.

As a part of the research, the following research thesis was put forward: Taking the evidence in the form of expert opinion prepared by a valuer in a compensatory matter for the restriction on use of an immovable property located in a RUA is admissible only inasmuch as the court, in the evidence thesis, among the obligatory structural elements of such thesis, specifies the restriction on use of the immovable property with regard to the particular estimated property, by indicating the use of the relevant area as provided for in the RUA Resolution by means of a direct reference to the provisions of such Resolution and verifying if the Resolution envisages, in respect of the given immovable property, any compensable precepts or prohibitions on its use. If there are no restrictions on the use of the immovable property, it is unnecessary to assess the value of the immovable property or to take evidence in the form of expert opinion from a valuer.

The article is composed of introduction and four parts. The first part is an overview of literature on state interventionism, including the state intervention consisting in the establishment of RUAs for the selected APs in Poland and their consequences to the parties to the conflict. The second part presents the adopted research methodology. The third part covers the results of the implemented research and discussion. The whole ends with conclusions.

### **LITERATURE REVIEW**

The ongoing economic development contributes to an intensification of urbanisation processes increasing the levels of nuisances, among others noise. Such phenomena may give rise to numerous neighbourhood conflicts. In particular, negative external effects to neighbouring immovable properties can be encountered in connection with an airport's operation.

Presence of negative external effects relating to the operation of airports contributes to the emergence of disputes between airports and owners (perpetual usufructuaries) of immovable properties located within the area affected by nuisance, which, bearing in mind the operating scale of an airport, can be extensive. Particular importance in that regard attaches to the conflicts with owners of residential properties. Disputes arising in the context of the above can be solved by different methods. One of them is state intervention in the real estate market in the proximity of airports. In the Polish conditions such intervention assumes the form of establishing special zones, so called restricted use areas (RUA), which are characterised by features

---

specific to a triangular – tripartite intervention (see: Rothbard, 2008, p. 277; Konowalczyk, 2018, p. 66) in which, in the conditions of a neighbourhood conflict, the state, by applying appropriate legislation, defines an exchange of rights, specifying at the same time the terms of resolving disputes. Academic literature knows also other types of intervention, such as autistic or binary (Kopsch, 2016), or, considering the purpose of intervention: allocative, stabilising or sectional one (for more, see: Wojtyna, 1990, p. 46). Implementation of public intervention is grounded in R. Coase's theory, according to which the efficiency perspective is determined by the criterion of social utilitarianism (see: Coase, 2013, p. 86). In principle, the cause of a public intervention are high social costs relating to the operation of the market, and uncertainty relating to the resolution of conflicts with a generally stronger party (that is an airport). The intervention is supposed to correct the consequences of the defective market mechanism allowing a loss of social welfare (see: Rączka, 2002, p. 414). As signalled in literature of the subject, both market mechanisms and the intervention on the market itself can prove defective (Głuszak, 2019, p. 20). In the light of the above, state intervention should assume a form of combination between the imperfect market and just as imperfect state (Wolf, 1993). When making a public intervention, one should consider its consequences on two levels. The first one are the economics or the ownership right, which in practice boil down to the formation of the ownership right's content. The second level relates to assessing the economics of transaction costs by creating mechanisms of influencing the real estate market (Williamson, 1998, p. 25).

Methods of compensating the consequences of state intervention are diverse in different places in the world. Moreover, it would be difficult to speak of any uniformity both on the global scale and among the Member States of the European Union (Goulbourne, 2002; Alterman, 2010; Pilsk, 2012; Migala, 2017). There are also situations in which the state refrains from intervening between an airport and owners of immovable properties.

When the state decides to intervene, it is necessary to frame a mechanism of solving the neighbourhood conflict as a part of which both the criteria and means of resolving the conflict are specified (see: Habdas & Konowalczyk, 2018, p. 6 et seq.). In Poland, the Environmental Law Act provides for a zoning intervention (see: Miler, 2012, p. 218) consisting in the establishment of a restricted use area around an airport where appropriate precepts and prohibitions are imposed determining the allocation of land for specific purposes, technical conditions relating to buildings and the use of immovable properties. The prerequisites of creating a RUA have been provided for in Art. 135(1) ELA. The cited provision is at the same time a formal

---

basis for the creation of a RUA, among others, for airports (the list is exhaustive). RUAs are introduced by adopting a resolution or regulation establishing the area, which takes the form of an administrative act. Such act, by imposing restrictions, bears features of a proprietary act since it is effective vis-a-vis every owner (perpetual usufructuary) of the immovable property and not an individualised holder of specific rights (Kamiński, 2018, p. 196). Establishment of a restricted use area enables continuation of the facility's (airport's) operation even though the environmental quality standards are not met. The contents of such resolution of a regional (voivodeship) assembly or poviát council establishing a RUA are specified in the provision of Art. 135(3) letter "a" ELA. Under that norm, a resolution should specify the borders of a RUA and lay down: restrictions in the allocation of land for specific purposes, technical requirements for buildings and the admissible use of land. The last of the cited forms of public intervention will be the subject of further analysis. This form of intervention is addressed directly to property owners and can lead to imposition of prohibitions which may assume the form of a ban on development (erection of new residential or other buildings), transformation of land, change of the immovable property's use to other purposes (Czajkowska-Matosiuk, 2015, pp. 62-63). Restrictions on the use of the immovable property as provided for in the resolution establishing a RUA may be subject to compensation, however, such compensation is not obligatory. This is the case since under Art. 64(1-4) of the Constitution of the Republic of Poland, ownership may be restricted only under statutory provisions (in the discussed case, of ELA in conjunction with a local legislative act) and only to the extent such restriction does not compromise the essence of the ownership right. The cited provision does not guarantee compensation for the imposed restrictions on the use of immovable properties, which, however, does not exclude the possibility of compensating losses to the extent envisaged by the legislator. Therefore, a conclusion may be formulated that in the light of the applicable legal regulations, restriction of the ownership right by a public intervention in the form of specific prohibitions or precepts relating to the use of immovable properties as laid down in the provisions of a RUA Resolution for an airport is subject to compensation to the extent provided for by the legislator. An essential role for the determination of the compensation scope is played by the provision of Art. 129(2) ELA in conjunction with Art. 135 ELA. Under that provision: *"In consequence of restricting the use of an immovable property, its owner may claim compensation for the loss suffered; the loss shall include also the value impairment of an immovable property."* The necessary condition for the compensation of loss is restriction on the immovable property's use. Only concrete precepts and prohibitions can be a prerequisite

---

of compensatory liability. However, the implemented case-law studies point to a different, defective practice in which the harmful event is defined, among others, as the fact of adopting the RUA Resolution, noise, reduced comfort of the real estate's enjoyment or worse social reception of the immovable property, as confirmed by many defective court rulings (see: Supreme Court (SC), 2010; SC, 2016; SC, 2017), and opinions of the doctrine (Rakoczy, 2010; Gruszecki, 2019). However, in judicial practice, one can point to isolated rulings specifying proper liability prerequisites (SC, 2009), including entry into force of a regulation or local piece of legislation restricting the use of immovable properties. On top of that, in literature of the subject, authors point to a systemic error observable with regard to the conditions of intervention on real estate markets in the proximity of airports (see: Habdas, 2020, p. 15; Konowalczyk et al., 2020; Konowalczyk et al., 2021).

The public intervention provided for in ELA in relation to the creation of RUAs has led to the emergence of three purposes of valuation, out of which one can point to the purpose under Art. 129(2) ELA in conjunction with 135 ELA, that is: determination of compensation for the sustained loss caused by a restriction on an immovable property's use under the RUA Resolution. In such case, the adequately formulated scope of valuation should point to the specific value impairments caused by the concrete harmful event (i.e. by the imposed restriction on the use of immovable properties), (see: Konowalczyk, 2014, p. 202 et seq.). In many situations, state intervention has led to legal disputes between airports and owners of immovable properties located within the restricted use areas of the particular airports. In this connection, courts examining cases for compensation have allowed, under their rulings, evidence in the form of expert opinion prepared by a valuer.

The conducted pilot research of evidentiary rulings, which also involved assessment of court decisions, gave rise to a preliminary conclusion that the examined rulings essentially differed from one another although they were all delivered to order valuation for the purpose laid down in Art. 129(2) ELA in conjunction with Art. 135 ELA. A properly formulated evidentiary ruling appointing a valuer as expert witness should specify, among others, the thesis (for more, see: Studzińska, 2016, p. 164). In turn, the evidence thesis itself should be formulated so as to specify the subject matter and scope of valuation and the type of the compensations sought. On top of that, it should reflect the contents of the intervention made by the state. An evidence thesis should contain obligatory structural elements, including: the purpose of valuation (Art. 129(2) ELA in conjunction with Art. 135 ELA), specification of the harmful event and specification of the restriction on use of immovable properties.

---

In the light of the identified mistakes relating to the proper formulation of evidence theses, in respect of the state intervention made in the specific examined restricted use areas around airports, the following research thesis has been put forward for the purpose of the conducted research: Taking the evidence in the form of expert opinion prepared by a valuer in a compensatory matter for the restriction on use of an immovable property located in a RUA is admissible only inasmuch as the court, in the evidence thesis, among the obligatory structural elements of such thesis, specifies the restriction on use of the immovable property with regard to that particular estimated property, by indicating the use of the relevant area as provided for in the RUA Resolution by means of a direct reference to the provisions of such Resolution and verifying if the Resolution envisages, in respect of the given immovable property, any compensable precepts or prohibitions on its use. If there are no restrictions on the use of the immovable property, it is unnecessary to assess the value of the immovable property or to take evidence in the form of expert opinion from a valuer.

### **RESEARCH METHODOLOGY**

In the subjective dimension, the research was carried out in relation to five certified national civil airports for which restricted use areas have been established, namely:

- Warsaw AP (P.P. “Porty Lotnicze” in Warsaw),
- Cracow AP (MPL im. Jana Pawła II Kraków – Balice sp. z o.o. in Balice),
- Poznań AP ((MPL Poznań-Ławica sp. z o.o. named after Henryk Wieniawski in Poznań),
- Katowice AP (GTL S.A. in Katowice),
- Gdańsk AP (PL Gdańsk Sp. z o.o.).

In order to enable the research in question, the airports provided materials covering, for each airport, source materials for a number (5-9) of court cases, including:

- court rulings ordering evidence to be taken in the form of expert witness opinion,
- expert witness opinions.

The provided documentation covered source materials for 33 pending court proceedings brought by owners (perpetual usufructuaries) of immovable properties situated in the appropriate RUAs against particular airports, that is:

- 9 procedures against the Warsaw AP,
  - 6 procedures against the Cracow AP,
  - 6 procedures against the Poznań AP,
-

- 5 procedures against the Katowice AP,
- 7 procedures against the Gdańsk AP.

Moreover, the empirical research involved analysis of the provisions of Resolutions establishing restricted use areas for the examined airports.

In the research, the case study method was used for the procedures selected for analysis by the particular airports, regarding matters for compensation for value impairment of the residential properties located in the airports' RUAs (under Art. 129(2) ELA in conjunction with Art. 135 ELA). For the purpose of the research, first, theoretical matters were sorted out in relation to the conduct of evidentiary procedure in civil matters and the problems of evidence in the form of a valuer's expert witness opinion.

The purpose of the research is to critically evaluate the formulation of evidence theses ordering expert opinion from a valuer for the purpose of determining the compensation for value impairment of residential properties located in airport RUAs under Art. 129(2) in conjunction with Art. 135 ELA, in the context of the adopted assumptions of the state intervention, as expressed in RUA Resolutions. The evaluation carried out was limited solely to the assessment of regularity of the specification of harmful event in the light of the contents of the public intervention, as provided for in RUA Resolutions, and the admissibility to take evidence in the form of a valuer's expert opinion. Each evidence thesis was assessed in terms of its regularity, using the two following criteria:

- specification of the harmful event,
- indication of the restrictions relating directly to the assessed property.

The point of reference for the assessment of regularity of evidence theses, according to the adopted criteria, were the legal provisions of:

- the Environmental Law Act,
- local legislative acts – resolutions establishing RUAs for particular airports,
- the Regulation on valuation of properties and preparation of valuation reports.

The research involved an analysis of the contents of the interventions made under the local legislation, consisting of following resolutions, and such contents were then referred to the evidence theses included in the analysed court rulings with a view to evaluating the rulings' regularity and admissibility to take evidence in the form of expert witness opinion:

- Resolution XVIII/302/12 of the Wielkopolskie Voivodeship Assembly of 30 January 2012 establishing a restricted use area for the Poznań-



- ławica airport in Poznań (Dz.Urz.Woj. Wielkopolskiego 2012, item 961),
- Resolution 203/XVIII/16 of the Pomorskie Voivodeship Assembly of 29 February 2016 establishing a restricted use area around the Lech Wałęsa Airport in Gdańsk (Dz.Urz.Woj. Pomorskiego 2016, item 1093),
  - Resolution IV/53/12/2014 of the Śląskie Voivodeship Assembly of 25 August 2014 establishing a restricted use area for the International Airport “Katowice” in Pyrzowice (Dz.Urz.Woj. Śląskiego 2014, item 4405),
  - Resolution XXXII/470/09 of the Małopolskie Voivodeship Assembly of 25 May 2009 establishing a restricted use area for the Kraków – Balice airport managed by Międzynarodowy Port Lotniczy im. Jana Pawła II Kraków – Balice Sp. z o.o. (Dz.Urz.Woj. Małopolskiego 2009, No. 470),
  - Resolution 76/11 of the Mazowieckie Voivodeship Assembly of 20 June 2011 establishing a restricted use area for the Airport named after Frederic Chopin in Warsaw (Dz.Urz.Woj. Mazowieckiego 2011, No. 128, item 4086).

Analysis of the triggering event was based on the evaluation of an evidence thesis and the event indicated by the court in such thesis which, in the court’s opinion, gave rise to the damage. In this respect, the following acronyms were used to describe the results of analysis concerning the harmful event:

- LOC\_RUA, the court indicated as harmful event the physical factor of deteriorated location because of the property’s location in a RUA;
  - RES, the court indicated as harmful event the restriction on the property’s use (RU);
  - RES\_NOISE, in the thesis, the court indicated as harmful event the restriction on use and noise, that is the increased noise level in the property’s environment in relation to properties located further away from the airport;
  - EST\_RUA, the court indicated as harmful event the legal factor of establishing the restricted use area and its consequences for the conditions of the market’s operation;
  - EST\_RUA & RES, the court recognized as harmful event the two joint circumstances referred to by the acronyms: EST\_RUA and RES;
  - EST\_RUA & RES & NOISE, the court formulating the thesis recognized as harmful event the establishment of the restricted use area, restriction on the property’s use and noise;
-

- EST\_RUA & RES & NOISE & OTHER, the court recognized as harmful event the same as referred to by the acronym EST\_RUA & RES & NOISE plus other events (e.g. other factors independent of the defendant's operation, trends relating to the formation of property prices in the local property market);
- EST\_RUA & RES & OTHER, the court recognized as harmful event the same as referred to by the acronym: EST\_RUA & RES plus other events indicated in the thesis (e.g. other factors independent of the defendant's operation, trends relating to the formation of property prices in the local property market).

On the other hand, the analysis of the specification of restrictions relating directly to the assessed property (specification of harmful event) was carried out according to three criteria marked by the following acronyms:

- CONCR\_IND, when the court indicated in the evidence thesis a concrete restriction on the property's use, following directly from the provisions of the resolution establishing the RUA;
- INCONCR\_IND, when the court invoked in the evidence thesis a restriction on the property's direct use but failed to specify which restriction under the resolution establishing the RUA should be taken into account by the expert witness preparing the opinion, or when the court invoked a restriction on the property's use but did not establish if such restriction was in fact provided for in the resolution establishing the RUA;
- NO\_IND, when the court did not point at all to the restriction on the property's use.

The analysis of the content of intervention as provided for in the RUA Resolutions for the examined airports was limited only to the use of the relevant area (acronym: RES). The elements of intervention deliberately omitted were: restrictions in the allocation of land for specific purposes and specification of technical requirements for buildings. For the purpose of analysing RUA Resolution provisions restricting the owners' (perpetual usufructuaries') use of the immovable property, the following acronyms were used:

- RES\_L\_RD – ban on residential development on residential land in respect of single-family houses, multi-family houses and other residential buildings as per the Resolutions (RD);
  - RES\_L\_SB – ban on development involving other sensitive buildings (SB) on land with relevant allocation, relating to the construction of: hospitals, nursing homes and buildings related to permanent or
-

temporary stay of children and youth, such as schools, kindergartens, dormitories, children's homes and other construction with sensitive purposes as per the Resolutions;

- RES\_DB\_to\_RDP – ban on changing the function of different buildings (DB) to residential purposes – single-family, multi-family, mixed housing, farm buildings or others, as per the Resolutions;
- RES\_DB\_to\_SB – ban on changing the function of DB to the purposes of sensitive buildings (SB).

The research accounts for the fact that for certain airports several zones within the RUA were established, each of them characterised by a formally different scope of public intervention.

### **RESULTS & DISCUSSION**

As a part of the research, 49 evidence theses were assessed based on two evaluation criteria (harmful event and the specification of the restriction on use), and then the contents of the evidence theses were referred to the contents of public intervention regarding the restriction on use of immovable properties as referred to in Art. 129(2) ELA in conjunction with Art. 135 ELA. Table 1 presents the research results.

**Table 1. Evaluation of evidence theses according to two criteria**

No.	Harmful event	Specification of the restriction on use of immovable properties
1.	EST_RUA & RES & OTHER	INCONCR_IND
2.	EST_RUA & RES & OTHER	INCONCR_IND
3.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
4.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
5.	EST_RUA	NO_IND
6.	EST_RUA & RES & OTHER	INCONCR_IND
7.	EST_RUA	NO_IND
8.	EST_RUA & RES & OTHER	INCONCR_IND
9.	EST_RUA & RES & OTHER	INCONCR_IND
10.	EST_RUA & RES	INCONCR_IND
11.	EST_RUA	NO_IND
12.	LOC_RUA	NO_IND
13.	EST_RUA & RES & OTHER	INCONCR_IND
14.	EST_RUA & RES & OTHER	INCONCR_IND
15.	EST_RUA	NO_IND
16.	EST_RUA	NO_IND
17.	EST_RUA & RES	INCONCR_IND
18.	EST_RUA & RES	INCONCR_IND

No.	Harmful event	Specification of the restriction on use of immovable properties
19.	RES	INCONCR_IND
20.	EST_RUA	NO_IND
21.	EST_RUA	NO_IND
22.	EST_RUA	NO_IND
23.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
24.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
25.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
26.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
27.	EST_RUA & RES & NOISE	INCONCR_IND
28.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
29.	EST_RUA & RES & NOISE & OTHER	INCONCR_IND
30.	EST_RUA	NO_IND
31.	EST_RUA	NO_IND
32.	EST_RUA	NO_IND
33.	EST_RUA	NO_IND
34.	RES	INCONCR_IND
35.	RES	INCONCR_IND
36.	RES_NOISE	INCONCR_IND
37.	EST_RUA	NO_IND
38.	EST_RUA	NO_IND
39.	EST_RUA	NO_IND
40.	EST_RUA	NO_IND
41.	EST_RUA & RES	INCONCR_IND
42.	EST_RUA & RES	INCONCR_IND
43.	RES	INCONCR_IND
44.	RES	INCONCR_IND
45.	RES	INCONCR_IND
46.	EST_RUA	NO_IND
47.	EST_RUA	NO_IND
48.	EST_RUA	NO_IND
49.	EST_RUA	NO_IND

Source: own research.

Taking into consideration the first evaluation criterion, i.e. the harmful event, 6 evidence theses include proper specification of the harmful event (restriction on use), as referred to in Art. 129(2) ELA. In 22 evidence theses, the courts invoked restriction on use of the immovable property as the harmful event along with other triggering events, i.e. noise, establishment of a restricted use area or others. Such formulation of an evidence thesis is partly correct, however, as a consequence of adducing other harmful events which were not qualified by the legislator as events subject to compensation, such evidence thesis is misleading to the expert witness by suggesting that also

other circumstances, apart from the restriction of use of the immovable property, allow to seek relevant compensation and, in turn, affect the scope of the valuation made. In 17 theses the courts invoked, as harmful event, the establishment of a RUA. In one evidence thesis, the harmful event is location. Under Art. 129(2) ELA neither the establishment of a RUA nor the location are harmful events, which makes the theses incorrect and contrary to the statutory law. In summary, it can be said that, taking into account the first criterion, 6 evidence theses were formulated properly. The evaluation of evidence theses according to the second criterion shows that none of the theses included a specification of the harmful event by reference to the contents of public intervention, as expressed in the appropriate Resolution establishing the restricted use area. Such formulation of the theses shifts the obligation to determine the legal framework to the expert witness, which is contrary to the applicable provisions of the Code of Civil Procedure.

From the perspective of the process of valuation carried out for the purpose set out in Art. 129(2) ELA, it is necessary that the court determines the contents of the intervention made in an airport's RUA. Table 2 presents the scope and content of intervention in particular RUAs for the examined airports.

**Table 2. Content of the public intervention regarding the use of immovable properties located in airport RUAs**

Airport	Zone	Intervention within the scope referred to in Art. 129(2) ELA in the Resolutions creating RUAs for airports			
		RES_L_RD	RES_L_SB	RES_DB_to_RDP	RES_DB_to_SB
Warsaw	Z1	yes	yes	yes	yes
Warsaw	Z2	-	yes	-	yes
Katowice	-	yes (partly)	yes	yes (partly)	yes
Cracow	A	yes	yes	yes	-
Cracow	B	-	yes	-	-
Cracow	C	-	yes (night)	-	-
Poznań	W	-	yes	-	-
Poznań	Z	-	yes	-	-
Gdańsk	A	-	yes	-	yes
Gdańsk	B	-	yes	-	yes

Source: own elaboration based (Konowalczyk, 2021, pp. 127-128).

The data presented in Table 2 point to differences in the contents of public intervention noted in particular airport RUAs from the point of view of residential property owners. Additionally, in 4 of the examined airports separate zones were created within the RUA with a different degree of public intervention (in certain cases there are no restrictions at all on the use of

immovable properties). In general, in RUAs in which the intervention took place its scope was different and related to: (1) imposition of different prohibitions with regard to residential properties, or (2) imposition of prohibitions determining the conditions for development on the housing market.

The data presented in the discussed table are of key importance in the process of specifying the harmful event. The court adjudicating in a given case, when allowing evidence in the form of expert witness opinion to be prepared by a valuer should, apart from mentioning the harmful event – restriction on use of the immovable property (RES), specify the restriction by referring to the provisions of the RUA Resolution. As follows from Table 2, in certain situations there is no formalised public intervention, which precludes as such the possibility to take evidence in the form of a valuer's expert opinion. For example, with regard to the market for housing properties located in zone B of the Gdańsk AP and in zone Z of the Poznań AP, the intervention does not relate to housing properties, which means that the owners of immovable properties located in those zones have not been affected by such intervention. On the other hand, in zone Z1 of the Warsaw AP and in zone A of the Cracow AP, an intervention took place in relation to the housing market, involving a prohibition of new residential construction for land properties with an existing (i.e. from before the intervention) allocation for residential development. Analysis of the contents of the examined RUA Resolutions leads to a general conclusion that those resolutions only rarely introduce restrictions on use for the existing residential housing.

The court, when appointing an expert witness is obliged to clearly specify what constitutes a legal loss, and to indicate the scope of the compensatory obligation so that the valuation reflects the consequences of the implemented public intervention which, under the applicable legislation, are subject to compensation. In consequence, the content of the evidence thesis included in the court's ruling allowing evidence in the form of expert opinion should point to: (1) the purpose, (2) the subject matter and (3) the scope of valuation (see: Regulation of the Council of Ministers on the valuation of properties and preparation of valuation reports). As a part of the presented research results, the analysis was limited to the valuation of losses relating to the restriction on use of immovable properties. In such situations, the purpose of valuation is to determine compensation for the sustained loss caused by a restriction on the immovable property's use under the Resolution establishing a RUA (Art. 129(2) ELA in conjunction with Art. 135 ELA). Specification of the subject matter of valuation requires the court to establish whether or not with

---

regard to the estimated land, building or apartment property (or their parts) any restrictions on use have been imposed (specifying the harmful event by a direct reference to the provisions of the RUA Resolution). On the other hand, the scope of valuation refers to the determination of value impairment for the immovable property in question. As far as the examined theses are concerned, none of them specify the harmful event properly. The above activities, against the applicable civil procedure, were delegated to expert witnesses, which must be considered irregular.

### **CONCLUSION**

As a consequence of the research carried out, the following conclusions can be formulated:

1. Delivery of a ruling allowing evidence in the form of an expert witness opinion in court proceedings in compensation matters for a restriction of use of an immovable property following from a public intervention requires the court to specify, in the evidence thesis, the harmful event by directly referring to the provisions of the Resolution establishing a RUA, and to verify if, in respect of the particular immovable property, the Resolution imposes any compensable precepts or prohibitions on its use.
2. In a situation when, under the provisions of a RUA Resolution, no restrictions have been imposed on use of the immovable property in question, the courts should not deliver rulings allowing evidence in the form of expert witness opinion since there is no need to specify the immovable property's value.
3. When, under the provisions of a Resolution establishing a restricted use area, no restrictions on use of the immovable property have been imposed (no public intervention), there is no need for any activities of a court-appointed valuer involving preparation of a valuation report.
4. In case of doubt as to the interpretation of law with regard to the restriction on use of the immovable property, the above does not preclude legitimacy of an expert witness's activities aimed at the court's further specification of the evidence thesis included in the evidentiary ruling.

### **ACKNOWLEDGEMENTS AND FINANCIAL DISCLOSURE**

Publication financed from the project "The Reduction of Negative Consequences of Noise Nuisance from Airports in Poland" (SOWA 2020), carried out in the Cracow University of Economics as a part of the basic task of

---

pursuing scientific activities, rendition of research services and transfer of knowledge and technologies to the economy, under § 4(1) item 1 of the Charter of the University of Economics.

### REFERENCES

- Act of 27 April 2001 – Environmental Law* (Dz.U. 2020, No. 1219, 1378, 1565 as amended).
- Alterman, R. (Ed.) (2010). *Takings International. A Comparative Perspective on Land Use Regulations and Compensation Rights*. Chicago: ABA Publishing.
- Coase, R. (2013). *Firma, rynek i prawo*. Warszawa: Wolters Kluwer.
- Czajkowska-Matosiuk, K. (2015). Ograniczenie korzystania z nieruchomości w związku z wymogami ochrony środowiska. *Prawo i Środowisko*, 1.
- Dzierżanowska, J., & Studzińska, J. (2016). *Biegli w postępowaniu sądowym cywilnym i karnym. Praktyczne omówienie regulacji z orzecznictwem*. Warszawa: Wolters Kluwer.
- Głuszak, M. (2019). *Efekty zewnętrzne jako przyczyna zawodności rynku nieruchomości*. Kraków: Wydawnictwo Uniwersytetu Ekonomicznego w Krakowie.
- Goulbourne, S. (2002). Airport Noise and the Right to Family Life: A Legitimate Application of Article 8 of the European Convention? *Liverpool Law Review*, 24(3), 227-236. <https://doi.org/10.1023/A:1023985530190>.
- Gruszecki, K. (2019). *Prawo ochrony środowiska. Komentarz*. Warszawa: Wolters Kluwer.
- Habdás, M. (2020). Odszkodowania dla właścicieli nieruchomości zlokalizowanych w obszarach ograniczonego użytkowania dla lotnisk – wyzwania dotyczące prawidłowego ustalenia zakresu odpowiedzialności odszkodowawczej i podlegającej kompensacji szkody – część 1. *Przeгляд Sądowy*, 5/2020.
- Habdás, M., & Konowalczyk, J. (2018). Cele i warunki skutecznej interwencji Państwa w obszarach ograniczonego użytkowania portów lotniczych. *Świat Nieruchomości*, 105(3), 5-16. <https://doi.org/10.14659/WOREJ.2018.105.001>.
- Judgment of the SC of 06 May 2010 (II CSK 602/09, LEX No. 585768).
- Judgment of the SC of 21 March 2017 (I CSK 440/15, LEX No. 2305911).
- Judgment of the SC of 25 February 2009 (II CSK 546/08, LEX No. 105179916).
- Judgment of the Supreme Court (SC) of 15 December 2016 (II CSK 151/16, LEX No. 2241380).
- Kamiński, Ł. (2018). *Administracyjnoprawne ograniczenia prawa własności nieruchomości*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.



- Konowalczyk, J. (2014). *Wycena nieruchomości do celów kredytowych*. Warszawa: Poltext.
- Konowalczyk, J. (2018). Fair Value in the Valuation of Damage to Property Caused by Indirect Nuisance Created by Companies. *Real Estate Management and Valuation*, 26(3), 60-70. <https://doi.org/10.2478/remav-2018-0025>.
- Konowalczyk, J., Habdas, M., Foryś, I., & Drobiec, Ł. (2021). *Wartość nieruchomości w sąsiedztwie lotnisk – metodyka szacowania szkód i ustalania odszkodowań*. Warszawa: Wydawnictwo C.H. Beck.
- Konowalczyk, J., Habdas, M., Kamińska, M., Bryła, J., & Tomecki, M. (2020). *Metodyka wyceny szkody. Raport z ogólnopolskiego badania tez dowodowych sądów w sprawach o odszkodowania w OOU*. Kraków: Uniwersytet Ekonomiczny w Krakowie.
- Kopsch, F. (2016). The Cost of Aircraft Noise – Does it Differ from Road Noise? A Metaanalysis. *Journal Air Transport Management*, 57, 138-142. <https://doi.org/10.1016/j.jairtraman.2016.05.011>.
- Metodyka szacowania wartości w obszarach ograniczonego użytkowania portów lotniczych w Polsce* (2018). Unpublished manuscript. University of Economics in Katowice.
- Migala, S. J. (2017). UAS: Understanding the Airspace of States. *Journal of Air Law and Commerce*, 82(3). <https://scholar.smu.edu/jalc/vol82/iss1/2>.
- Miler, A. (2012). *Obszar ograniczonego użytkowania*. Toruń: TNOiK „Dom Organizatora”.
- Pilsk, W. E. (2012). Airport Noise Litigation in the 21st Century: A Survey of Current Issues. *Issues in Aviation Law and Policy*, 11(3).
- Rączka, J. (2002). Dlaczego państwo reguluje rynki – pozytywne teorie regulacji ekonomicznej. *Ekonomista*, 3, 413-424.
- Rakoczy, B. (2010). Glosa do wyroku Sądu Najwyższego z dnia 25 lutego 2009 r., II CSK 546/08. *Przegląd Prawa Ochrony Środowiska*, 2(4), 161-168.
- Regulation of the Council of Ministers of 21 September 2004 on valuation of properties and preparation of valuation reports* (Dz.U.2019, No. 2250 as amended).
- Resolution 203/XVIII/16 of the Pomorskie Voivodeship Assembly of 29 February 2016 establishing a restricted use area around the Lech Wałęsa Airport in Gdańsk* (Dz.Urz.Woj. Pomorskiego 2016, item 1093).
- Resolution 76/11 of the Mazowieckie Voivodeship Assembly of 20 June 2011 establishing a restricted use area for the Airport named after Frederic Chopin in Warsaw* (Dz.Urz.Woj. Mazowieckiego 2011, No. 128, item 4086).
-

- Resolution IV/53/12/2014 of the Śląskie Voivodeship Assembly of 25 August 2014 establishing a restricted use area for the International Airport "Katowice" in Pyrzowice* (Dz.Urz.Woj. Śląskiego 2014, item 4405).
- Resolution XVIII/302/12 of the Wielkopolskie Voivodeship Assembly of 30 January 2012 establishing a restricted use area for the Poznań-Ławica airport in Poznań* (Dz.Urz.Woj. Wielkopolskiego 2012, item 961).
- Resolution XXXII/470/09 of the Małopolskie Voivodeship Assembly of 25 May 2009 establishing a restricted use area for the Kraków – Balice airport managed by Międzynarodowy Port Lotniczy im. Jana Pawła II Kraków – Balice Sp. z o.o.* (Dz.Urz.Woj. Małopolskiego 2009, No. 470).
- Rothbard, M. N. (2008). *Ekonomia wolnego rynku*, Tom 3. Chicago-Warszawa: Fijorr Publishing.
- Williamson, O. E. (1998) Transaction cost Economics: How It Works. Where It I Headed. *The Economist*, 146(1), 23-56.  
<https://doi.org/10.1023/A:1003263908567>.
- Wojtyła, A. (1990). *Nowoczesne państwo kapitalistyczne a gospodarka*. Warszawa: PWN.
- Wolf, C. (1993). *Markets or Governments. Choosing between Imperfect Alternatives*. Cambridge: MIT.
-