LOW EMISSION ZONES – – REMARKS AGAINST THE BACKGROUND OF THE CURRENT LEGISLATION IN POLAND AND THE CZECH REPUBLIC

Ewa Radecka, Ph.D.

Introduction

One of the instruments that was supposed to improve air quality was the so-called Low Emission Zones,introduced in other countries,e.g., Germany.[1] An analysis of low-emission zones in the EU by Stadler Consultants shows that between 2019 and 2022, the number of cities using low-emission zones increased from 228 to 320.[2] The creation of clean transport zones could be one of the following instruments working to improve air quality. However, as practice shows, creating such zones faces various obstacles (from social to legal ones).

This text is intended to provide an overview of the Polish and Czech legal regulations, which might become a contribution to a broader international discussion related to the creation of these zones.

Background

Explaining the functioning of a certain legal framework[3] requires placing them in specific factual realities, hence reference to specific data, including statistics, is necessary.

With reference to Poland, it is worth mentioning the 2020 report of the Supreme Chamber of Control on the impact of vehicle emissions on air quality in Poland.[4] In its light, the system for admitting vehicles to traffic, including the test procedures in force and the requirements for measuring equipment at Vehicle Inspection Stations,

[1] See § 40 of the Act of 15 March 1974 protecting against harmful effects on the environment caused by air pollution, noise, vibration and similar processes [*Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge (Bundes-Immissionsschutzgesetz – BimSchG)*] and the regulation issued thereunder of 10 October 2006 on the implementation of the Federal Emissions Control Act (Regulation on the labelling of motor vehicles with low pollutant emissions – 35. BImSchV) [*Verordnung zur Kennzeichnung der Kraftfahrzeuge mit geringem Beitrag zur Schadstoffbelastung (35. BImSchV)*] as well as J. Vodička, Auta, emise a klima: právní nástroje environmentální regulace, Brno: Masarykova univerzita, 2021, p. 157 *ff*.
There are currently 44 low emission zones in Germany. Available at: https://www.umweltbundesamt.de/themen/luft/luftschadstoffe/feinstaub/umweltzonen-in-deutschland#1-wie-ist-der-aktuelle-stand-der-umweltzonen, [cit. 2024.03.01].

[2] Available at: https://urbanaccessregulations.eu/, [cit. 2024.02.25].

[3] According to the legal status as of 20 March 2024.

[4] Report of the Supreme Chamber of Control, 2022. Available at: https://www.nik.gov.pl/aktualnosci/ochrona-srodowiska/zabojczy-smog-z-samochodowych-spalin.html [cit. 1 March 2024], hereinafter referred to as SCC Report.

does not effectively eliminate vehicles with excessively toxic exhaust fumes from traffic.[5] The activities of the Police and the Road Transport Inspection were also ineffective in this respect, as too infrequent road checks did not ensure that vehicles in poor technical condition were removed from the roads. The situation is also not facilitated by the fact that since Poland's accession to the EU, the number of cars used in Poland has more than doubled (13.3 million imported second-hand vehicles have been registered).[6] All of this should be supplemented by the fact that almost 140,000 vehicles on Polish roads have software that falsifies exhaust emissions (the so-called Dieselgate scandal).[7] It should be noted that, as of 31 December 2022, there were almost 34.9 million motor vehicles and tractors registered in Poland,[8] including, *inter alia*, 26.4 million passenger cars, 129,000 buses and 4.25 million ballast and agricultural tractors.[9] According to Eurostat estimates for 2022, there were 584 cars per 1,000 inhabitants.[10]

Unfortunately, the figures for the average age of a passenger car are not optimistic,[11] as in 2022 the average age of a passenger car was 14.9 years[12] 0.4 years more than in 2021) In addition, as indicated by various reports, the passenger car fleet is an ageing fleet, with almost 75% of vehicles over 11 years old (of which 23% vehicles are over 20 years old), and petrol or diesel propulsion is dominant in the segment over 11 years).

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[5] See the SCC Report and the results of the exhaust emission measurements carried out in 2019 in the city of Kraków. More than 60,000 cars and vans were tested, without being stopped for inspection. It was found that 57 per cent of the vehicles tested did not meet the standards for nitrogen oxides, 48 per cent for carbon monoxide emissions, 45 per cent for hydrocarbons, and 40 per cent for particulates.

[6] Ibidem.

[7] MOŻDŻYŃ, O., Afera Volkswagena a ochrona powietrza w Polsce. Czy możemy coś zrobić? In: RADECKA, E., NAWROT, F. (eds.), Prawne instrumenty ochrona powietrza Wybrane zagadnienia, Katowice: Infomax, 2018, pp. 77-88 the web page available at: https://wgospodarce.pl/informacje/21312-do-polski-trafilo-blisko-140-tys-samochodow-vw-z-wadliwymi-silnikami [cit. 2024.02.14].

[8] However, these figures are often considered to be incomplete, as they do not take into account vehicles which are unregistered, even though they are not fit for use or no longer exist at all. Footnote 5 in the text PONIATOWSKI, P., RADECKI, W., Samochód a środowisko na tle rozważań prawników czeskich i rozwiązań przyjętych w Polsce, cz. I, *Prokuratura i Prawo*, no 1 (2022), pp. 85-109, ISSN 1233–2577 and the web page available at: https://www.money.pl/gospodarka/7-milionow-martwych-dusz-w-systemie-cala-prawda-o-samochodach-w-polsce-6997276676131520a.html, [cit. 2024.02.20].

[9] Statistical Yearbook of the Republic of Poland 2023, p. 555, available at: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5515/2/23/1/rocznik_statystyczny_rzeczypospolitej_polskiej_2023_2_link.pdf [cit. 2024.02.14].

[10] Available at: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240117-1 [cit. 2024.02.26].

[11] Daat based on Automotive industry report 2023/2024, Polski Związek Przemysłu Motoryzacyjnego [Polish Automotive Industry Association], available at: https://www.pzpm.org.pl/en/Automotive-market/Reports/PZPM-Automotive-Industry-Report-2023-2024 [cit. 2024.02.13], hereinafter referred to as PZPM Report .

[12] The average in the EU is 11.4. PAWŁOWSKI, S., *Low Emission Zones* …, p. 387.

It should only be mentioned that among the objectives of the National Energy Policy until 2040,[13] was the assumption of low-emission transport development, in particular striving for zero-emission public transport in cities with more than 100,000 inhabitants by 2030, and the assumptions of the Electromobility Development Plan [14] envisaged one million[15] electric vehicles in Poland by 2025.

According to statistics, a total of 6,305,934 passenger cars [*osobní včetně nákladních dodávkových*] were registered in the Czech Republic at the end of 2022, of which the distribution by fuel used is as follows:[16] almost 58% are petrol vehicles, almost 40% – diesel, just under 2% are LPG, 14,195 units or 0.23% are electric vehicles and the remainder are other. [17] Regarding the age structure, more than 4 million of these vehicles are over 10 years old, and 1 044 937 are between 5 and 10 years old; there are only 529 560 youngest vehicles up to 2 years old.[18] In addition, mention should also be made of 751,604 trucks [*nákladní automobil*], 20,828 buses, and 3,461 tractors [*silniční tahač*].[19] The average age of a passenger car in the Czech Republic us 15.9 years.[20]

According to Eurostat data for 2022, there are 582 cars per 1,000 citizens in the Czech Republic.[21] Approximately 160,000 vehicles have been sold on the Czech market with forgery software in connection with the Dieselgate scandal.[22]

It should only be mentioned that among the objectives of the National Energy Concept[23] an increase in clean mobility, especially battery electromobility (also

[13] Polityka energetyczna Polski do 2040 r [Poland's energy policy until 2040], p. 80, Announcement by the Minister of Climate and Environment of 2 March 2021 on the national energy policy until 2040. (Monitor Polski of 2021, item 264).

[14] Available at: https://www.gov.pl/attachment/7cbc60f4-fec6-4dc1-b950-548cb0e52e9e [cit. 14 February 2024].

[15] At the end of December 2023, 98 348 electric passenger cars were on Polish roads. The fleet of all -electric passenger cars (BEV, battery electric vehicles) amounted to 51 211 units, and the fleet of plug-in hybrid electric vehicles (PHEVs) – 47 137 units. See Licznik elektromobilności – podsumowanie 2023, https://elektromobilni.pl/liczba-samochodow-elektrycznych-w-polsce-wzrosla-o-polowe/, [cit. 2024.02.13].

[16] See in detail in Statistical Yearbook of Environmental Protection of the Czech Republic 2022, p. 52. [*Statistická ročenka životního prostředí České republiky 2022*], available at: https://www.cenia.cz/wp-content/uploads/2023/12/Statisticka_Rocenka_ZP_CR-2022.pdf, [cit. 2024.02.27], hereinafter referred to as Czech Statistical Yearbook.

[17] Other should be understood as: natural gas compressed separately or natural gas compressed in combination with petrol or diesel, or hydrogen or bioethanol. Czech Statistical Yearbook, p. 52.

[18] See in detail: Czech Statistical Yearbook, p. 47.

[19] Ibidem.

[20] Available at: https://www.acea.auto/publication/report-vehicles-on-european-roads/, [cit. 2024.02.27].

[21] Available at: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20240117-1, [cit. 2024.02.26].

[22] Available at: https://ekonomickydenik.cz/dieselgate-v-ceske-republice-160-tisic-poskozenych-a-nulove-odskodneni/, [cit. 2024.02.27].

[23] [*Aktualizaci Státní energetické koncepce*] Available at: https://www.mpo.cz/assets/cz/energetika/

hydrogen electromobility) is assumed. As an individual goal, the National Action Plan for Clean Mobility [*Národní akční plán čisté mobility*] sets an increase in the number of electric vehicles to 220,000 – 500,000 by 2030.[24]

Transport pollution significantly affects air quality in both Poland and the Czech Republic. Transport will be one of the main emitters not only of nitrogen oxides[25] or tropospheric ozone,[26] but also to some extent of particulate matter. Both direct emissions of pollutants from fuel combustion (from tailpipes) and emissions from the lift of pollutants from roads, caused by vehicle traffic and abrasion of the road surface, tyres or brake linings,[27] are significant. The impact of these harmful pollutants on human health is proven and undeniable.[28]

It should be noted at this point that the assessment of air quality in Poland[29] from this point of view indicates that nitrogen dioxide limits are exceeded on an annual basis in four zones (Wrocław agglomeration, Kraków agglomeration, Warsaw agglomeration and Upper Silesia agglomeration) and that this phenomenon is connected with the impact of motor transport emissions, i.e. vehicle traffic on the main road in the vicinity of stations and intensive vehicle traffic in the city centres. The data regarding tropospheric ozone are as follows: With regard to the target level (number of days with an 8-hour concentration exceeding 120 μg/m3), all 46 zones met the specified limits, but with regard to the long-term objective level, all zones in the country received a class D2, and were therefore all above the long-term

strategicke-a-koncepcni-dokumenty/2023/4/Vychodiska-aktualizace-Statni-energeticke-koncepce-CR-a-souvisejicich-strategickych-dokumentu.docx, [cit. 2024.02.27].

[24] [*Aktualizace Národního akčního plánu čisté mobility]*, 2019, p. 9, available at: https://www.mpo.cz/assets/cz/prumysl/zpracovatelsky-prumysl/automobilovy-prumysl/2020/5/Aktualizace-NAP-CM.docx, [cit. 2024.02.27].

[25] Pursuant to the appendix to the Regulation of the Minister of the Environment of 24 August 2012 on levels of certain substances in the air (Journal of Laws 2021, item 845 as amended, hereinafter referred to as : the 2012 Regulation), the permissible level of one-hour concentration of nitrogen dioxide is 200 μg/m3. According to the limits, it may not be exceeded more than 18 times per year. The situation is similar in the Czech Republic. See Annex 1 to Act No. 201/2012 on the Protection of the Air [Zákon č.201/2012 Sb., o ochraně ovzduší], hereinafter: the Czech Air Protection Act.

[26] In both Poland and the Czech Republic, a limit based on human health is assumed at 120 μg.m3/per 8 hours (see 2012 Regulation and Annex 1 to the Czech Air Protection Act).

[27] See Assessment of air quality in zones in Poland for the year 2022, Chief Inspector of Environmental Protection, p. 76. Available at: https://powietrze.gios.gov.pl/pjp/content/show/1004683, [cit. 2024.02.27], hereafter: CIEP Assessment.

[28] In Poland, where air pollution reaches some of the highest levels in the entire European Union, a slower fight against smog could result in an additional 87683 premature deaths. Available at: https://healpolska.pl/aktualnosci/zanieczyszczenie-powietrza-doprowadzi-do-nawet-87-tys-dodatkowych-przedwczesnych-zgonow-w-polsce-jezeli-politycy-nie-uchwala-ambitnych-przepisow-unijnych/ [cit. 2024.02.14]. See also: Wpływ zanieczyszczeń powietrza z transportu na zdrowie i rozwój dzieci, https://healpolska.pl/wp-content/uploads/2021/05/raport-zdrowie-dzeci-prev-12-05-1211.pdf, [cit. 2024.02.14].

[29] See CIEP Assessment, p. 32.

objective level.[30] In relation to particulate matter, limits are exceeded year after year on a large scale, but here the main source is the municipal and residential sector.[31] This problem generally affects the southern and central areas of the country. Symptomatically, these limits are exceeded even in spa towns which are known for treating pulmonary diseases.[32]

In the Czech Republic a smog situation[33] occurred for a total of 53 hours during the whole year 2022, and it only concerned above-normal concentrations of tropospheric ozone,[34] he main source of which is transport.[35] W roku tym nie ogłoszono żadnej sytuacji smogowej ze względu na przekroczenie stężenia pyłu PM10. No smog situation was declared during this year due to PM10 exceedances. The zones of: [36] Ostrava/Karviná/Frýdek-Místek[37] and Central Moravia are indicated as the main areas with the highest air pollution in the Czech Republic, with the aspect of transboundary air pollution from Poland also clearly emphasised.[38] The exceedances in 2022 were as follows: the emission limit for the annual mean PM2.5 concentration was exceeded at 5 stations. Exceedances of the daily PM10 emission limit occurred at 3 stations in 2022. The emission limit for the annual

[30] CIEP Assessment, p. 51.

[31] RADECKA, E. Prawna ochrona powietrza w Polsce i Czechach – wybrane zagadnienia (part I.), in print.

[32] Raport ClientEarth Prawnicy dla Ziemi, Jak w polskich górach zarabia się na smogu? Uzdrowiska i kurorty ponad prawem?, Warszawa 2023, available at: https://www.clientearth.pl/najnowsze-dzialania/materialy-do-pobrania/jak-w-polskich-gorach-zarabia-sie-na-smogu-uzdrowiska-i-kurorty-ponad-prawem/, [cit. 2024.02.07].

[33] According to § 10 of the Czech Air Protection Act, a smog situation is a state of extremely polluted air in which the level of pollution by sulphur dioxide, nitrogen dioxide, PM10 particles or tropospheric ozone exceeds one of the threshold values listed in Annex 6 to the Act.

[34] Air quality in the Czech Republic in 2022 [*Kvalita ovzduší na území České republiky v roce 2022*], p. 5. available at: https://info.chmi.cz/zpravy/UKO_AIM2022/, [cit. 2024.02.13].

[35] For details, see Czech Statistical Yearbook, p. 137.

[36] Air quality in the Czech Republic is assessed according to a list of zones and agglomerations within 10 areas: 3 agglomerations and 7 zones. See Annex 3 to the Act on Air Protection [*Příloha č. 3 k zákonu č. 201/2012 Sb.*].

[37] Air pollution is varied here and does not only come from individual combustion sources. These also include transport and industry. For more, see Air Quality in Regions of the Czech Republic, 2021, available at: https://www.chmi.cz/files/portal/docs/uoco/isko/grafroc/21groc/gr21en/21_05_charakteristika_regionu_EN_v3.pdf, [cit. 2024.02.13]. See also: JANČÁŘOVÁ, I., Legal Reflections on Problems with Excessive PM10 Concentrations in Ostrava-Karviná Agglomeration, Czech Republic In: DAMOHORSKÝ, M., STEJSKAL, V. (eds.), Czech Environmental Law Review 2017-2018, Beroun: Eva Rozkotová, 2019, pp. 36-57.

[38] National Emission Reduction Programme of the Czech Republic, 2023 Update [*Národní program snižování emisí ČR, Aktualizace 2023*], available at: https://www.mzp.cz/C1257458002F0DC7/cz/strategicke_dokumenty/$FILE/OOO-Aktualizace_NPSE_2023-20240118.pdf, p. 108, [cit. 2024.02.13], hereinafter: NPSE. See also the data in the Czech Statistical Yearbook in Table 3-7. Emissions from air pollution sources by Region [*3-7. Emise ze zdrojů znečišťování ovzduší podle krajů*] and 3.12 Emissions in selected localities [*3-12. Imise ve vybraných lokalitách*] as well as https://www.czso.cz/csu/czso/3-zivotni-prostredi-4z1x5kvfyw, [cit. 2024.02.13].

mean PM10 concentration was not exceeded at any of the 123 stations in 2022, the fourth consecutive time since 2019 in the entire history of PM10 measurements. All stations exceeding the limits in question are located within the Ostrava/Karviná/ Frydek-Místek agglomeration[39].

Legal grounds for creating clean transport zones in Poland

Regulations concerning this issue are included in Chapter 3 of the Act of 11 January 2018 on Electromobility and Alternative Fuels[40] entitled "Obligations of public entities for the development of alternative fuel infrastructure".

Pursuant to Article 39(1) of the AEAF, a *gmina* council may establish a clean transport zone comprising roads operated by the *gmina*.[41] It therefore follows that the legal regulation of the establishment of CTZs is based on voluntariness – the introduction of a zone is not mandatory.[42] Interestingly, this is left to the discretion of a *gmina*, even when air quality reports for a particular zone indicate that the permissible standards for air pollutants in a given area are exceeded. As an aside, negative impacts on historic buildings are not included in the criteria for the adoption of this resolution.

The provision further stipulates the prohibition of entry into a CTZ depending on the type of motor vehicle fuel used.[43] It is prohibited to enter an CTZ by motor vehicles other than:

1) electric vehicles[44];
2) vehicles propelled by hydrogen[45];
3) vehicles propelled by natural gas;[46]
4) exempted by resolution of a *gmina* council, pursuant to Article 39(4) of the AEAF.

[39] For more, see: NPSE, pp. 119 ff.

[40] Journal of Laws 2023, item 875, as amended, hereinafter: the AEAF.

41 As an aside, it should be noted that pursuant to Article 96c of the Act of 20 May 1971, the Code of Petty Offences (Journal of Laws 2023, item 2119, as amended), a violation of the prohibition to enter a clean transport zone is punishable by a fine of up to PLN 500. As indicated by § 2(1)(1) of the Regulation of the Minister of Internal Affairs and Administration of 17 November 2003 on the petty offences for which municipal guards are authorised to impose fines by way of a penalty ticket (Journal of Laws of 2022, item 1350, as amended) – municipal guards are authorised to impose fines by way of a penalty ticket for this offence.

[42] KOLA, J., Kompetencje samorządów w zakresie ustanawiania szczególnych zasad użytkowania pojazdów niskoemisyjnych w ruchu drogowym In: LIPOWICZ, I. (eds.), System Prawa Samorządu Terytorialnego. Volume III. Samodzielność samorządu terytorialnego – granice i perspektywy, Warszawa 2023, LEX.

[43] Motor vehicles within the meaning of Article 2(33) of the Act of 20 June 1997. – Road Traffic Law (Journal of Laws of 2023, item 1047 as amended, hereinafter: RTL)

[44] See the definition of an electric vehicle, Article 2(12) of AEAF.

[45] See the definition of a vehicle propelled by hydrogen, Article 2(15)of the AEAF.

[46] See the definition of a vehicle propelled by natural gas, Article 2(14) of the AEAF

The criterion that must be taken into account is the purpose of establishing the zone, i.e., to reduce the negative impact of transport emissions on human health and the environment in the *gmina*.

Exceptions to the above ban are provided for in Article 39(2) of the AEAF, and gmina councils are authorised to establish additional exemptions, both subjective and objective, in a resolution on the establishment of an CTZ (Article 39(4) of the AEAF). This, in turn, means that the final shape of the zone rests with the gmina,[47] as long as it falls within the statutory framework.

The procedure for drafting a resolution in question begins with the preparation of a draft resolution by the *wójt* or mayor, followed by consultations with residents. The deadline for submitting comments cannot be shorter than 21 days. Subsequently, the draft is submitted to the *gmina* council immediately after considering all comments made during the public consultations. The resolution-making body of the gmina adopts a resolution on the establishment of a Clean Transport Zone within 60 days of receipt of the draft.

In accordance with Article 40(2) of the AEAF, a resolution to establish a CTZ specifies:

1) boundaries of the CTZ area;
2) the way traffic is organised in the CTZ;
3) additional ways of publicising the contents of the CTZ resolution;
4) the amount and method of collection of the fee for access to the CTZ;
5) the amount of the sticker fee and the detailed method of issuing the sticker.[48]

In the following part of the essay, the most interesting problematic threads with the practical creation of these zones will be addressed.

The first of these is the designation of the **boundaries**. The territorial scope is set out in Article 39(1) of the AEAF. The text of this Article provides for the possibility of adopting such a resolution "for the area of a *gmina* . . . comprising roads whose operator is the *gmina*". The legislator did not use a legal definition of a public road[49], but a road whose operator is the *gmina*. In the context of the provision in question, it is not the category of the road that matters,[50], but who operates it. Such a zone should be marked,[51] and in such a way that it corresponds to the provisions of the resolution. Certainly, the range of the resolution must be

[47] OTAWSKI, P. In: SWORA, M. (eds.), Ustawa o elektromobilności i paliwach alternatywnych. Komentarz, Warszawa 2019, LEX i URBAN, S. In: KOKOCIŃSKA, K., POKRZYWNIAK, J. (eds.), Ustawa o elektromobilności i paliwach alternatywnych. Komentarz, Warszawa 2020, LEX.

[48] See Article 40(2) of the AEAF.

[49] See Article 1 of the Act of 21 March 1985 on Public Roads (Journal of Laws 2023, item 645, as amended).

[50] In accordance with the Act on Public Roads, the following categories of roads are distinguished according to their functions in the road network: national, voivodeship, powiat and gmina roads.

[51] See Article 39(14) of the AEAF and § 60d of the Regulation of the Ministers of Infrastructure and Internal Affairs and Administration of 31 July 2002 on traffic signs and signals (Journal of Laws 2019, item 2310).

determined after a thorough consideration of the factual situation[52] and a precise determination of where such transport emissions occur that have a negative impact on the environment and human health. Second, in view of the fact that non-compliance with the prohibition of entry into the SCT is punishable by liability for a petty offence, the extent of the zone must be precisely delimited. What needs to be emphatically stated, this cannot be an approximate designation or using a "line of considerable thickness" on maps[53] or a blanket reference to other legislation, including local law. In the author's opinion, this determination should be done not only by verbally articulating the name of the street,[54] but by accurately plotting it on a map, so as to ensure (through its scale and the way in which the boundaries are marked) that it is possible to establish without dispute whether a particular place is within or outside the area covered by the act.

However, it is necessary to look at the practice of applying this provision to the extent discussed in the resolutions on the establishment of CTZs adopted in Poland: two issued by the City Council of Kraków,[55] and the third by the City Council of Warsaw.[56] The first resolution of the Kraków City Council of 2018, in § 1(1), "… a clean transport zone 'Kazimierz' is established in the area specified in Annex 1 to this Resolution". This annex contains a map, with streets marked in green and a verbal indication of the names of individual streets. Resolution of the Kraków City Council of 2022 indicates in § 3(1) that "the boundaries of the CTZ area are the administrative boundaries of the city of Kraków …" The Warsaw Resolution, like the 2018 Kraków Resolution, refers to an appendix, but only the names of the streets delimiting the zone can be found there. The Kraków Resolution of 2022 and the Warsaw Resolution of 2023 seem to be at least laconic in this respect. This is

[52] A thorough consideration of the factual situation would aim, *inter alia*, to avoid the allegation of unequal treatment of areas with similar degrees or causes of air pollution.

[53] This issue is discussed quite extensively in various contexts. In the context of forms of nature protection , see LIPIŃSKI, A., Problems of creating certain forms of nature protection In: URA., E., STELMASIAK, J. PIEPRZNY, S. (eds.), Człowiek a środowisko. Aspekty prawno-społeczne, Rzeszów: RS Druk, 2010, p. 165 but also, for example, a restricted use area MILER, A., Obszar ograniczonego użytkowania. Zagadnienia prawne, Toruń: Dom Organizatora, 2012, pp. 163 *ff*. This issue is also referred to in the judgment of the Voivodesip Administrative Court in Kraków of 11 January 2024, ref. III SA/Kr 484/23, CBOSA, a non-final ruling..

[54] See also KARCIARZ, M., Strefa czystego transportu In: MISIEJKO, A., ZIEMSKI, K. (eds.), Akty prawa miejscowego w procesie organizowania publicznego transportu zbiorowego, Warszawa 2020, LEX.

[55] Resolution No. III/27/18 of the Kraków City Council of 19 December 2018 on the establishment of the "Kazimierz" Clean Transport Zone in Kraków (Official Journal of the Lesser Poland Voivodeship of 2018, item 8944 as amended) (hereinafter: the 2018 Kraków Resolution) and Resolution No. C/2707/22 of the Kraków City Council of 23 November 2022 on the establishment of the Clean Transport Zone in Kraków (Official Journal of the Lesser Poland Voivodeship of 2022, item 7878).

[56] Resolution No. XCI/2974/2023 of the Council of the Capital City of Warsaw of 7 December 2023 on establishing a clean transport zone on the territory of the Capital City of Warsaw (Official Journal of the Mazovian Voivodeship of 2023, item 14557), hereinafter: the Warsaw Resolution of 2023.

puzzling, all the more so as the designation of paid parking zones[57] is done with much greater precision than was the case when the CTZ boundaries were established. Another interesting thread is the issue of a **fee for entering a CTZ**. In the light of Article 39(5) of the AEAF, a gmina council may allow entry to an CTZ between 9 a.m. and 5 p.m. for a period of no longer than 3 years from the date on which the zone is established, of vehicles other than those specified in paragraphs 1 and 2 and those benefiting from exemptions under paragraph 4, provided that a fee is paid. In legal literature, it is possible to note both positions that advocate the optionality of this fee[58] and its mandatory nature.[59] In the opinion of the author of this text, the legislator explicitly states "subject to a charge". What is optional is the possibility to allow entry to an CTZ of vehicles other than low-/no-emission ones or those benefiting from exemptions on the basis of a resolution of the municipal council under paragraph 4. Second, if the fee is assumed to be optional, a situation could arise in which a large number of vehicles not being, after all, low- or no-emission ones, would enter the zone without the need to pay the fee for a maximum period of 3 years (if the gmina council decided on such a maximum). However, this would then be subject to a catalogue of exemptions from the Act and exemptions provided for by the gmina, which, as past experience has shown, are extensive. Therefore, the question arises as to the purpose of creating such a zone, which de facto will not be, as the name suggests, clean for 3 years, since access to it will be basically unlimited or only slightly restricted. Third, it should be noted that the legislator introduces a general criterion for the use of funds coming from this title, which is a closed catalogue. They may be used, *inter alia*, for the marking of the Clean Transport Zone or the purchase of zero-emission buses. This means that the charge is intended to support measures aimed at improving air quality, such as replacement of public transport fleets with low-emission ones, and thus implementation of, for example, the objectives of the National Energy Policy until 2040. Adopting the optionality of this fee will result in there being no source to fund the aforementioned measures.

[57] See, for example, for Kraków, where in the appendix to the resolution there is a map with the annotation "is for illustrative purposes only and cannot be used to define the boundaries of individual subzones and sectors", and the description of the zone itself in Appendix 1 to the resolution covers 4 typewritten pages. Resolution No. LXXXIX/2177/17 of the Krakow City Council of 22 November 2017 on the establishment of the paid parking zone, determination of fees for parking vehicles on public roads in the paid parking zone, introduction of a subscription fee for certain road users and the manner of collecting these fees (Official Journal of the Malopolska Voivodeship 2021, item 3515 as amended).).

[58] KARCIARZ, M., Strefa …, RYBSKI, R. In: BACH-GOLECKA, D. (eds.), Solidarność…

[59] OTAWSKI, P. In: SWORA, M. (eds.), Ustawa… i URBAN, S. In: KOKOCIŃSKA, K., POKRZYWNIAK, J. (eds.), Ustawa o elektromobilności...

Legal grounds for creating low emission zones in the Czech Republic

The *term nízkoemisní zóna* appears in Czech legislation.[60] These zones are regulatory instruments aimed at reducing the level of air pollution caused by traffic. This instrument is of a long-term nature, which distinguishes it from measures contained in air protection programmes. The low emission zone is established by municipal councils [*rada obce*],[61] which act in this respect by a legal act that constitutes an intermediate form between a decision and a normative act which is specific as regards its subject matter and unrestricted as regards its addressees [*opatřením obecné povahy*].[62] At the same time, a statutory catalogue of vehicles authorised to enter the zone is being introduced. These are:

a) a motor vehicle with a special emission sticker,[63] as specified in the implementing legislation, including an emission sticker issued in another country, with models of these to be published by the Ministry of the Environment on its website;
b) a vehicle listed in Annex 8 to the Act,[64] including, *inter alia*, vehicles transporting disabled persons, vehicles intended for road maintenance or repair and construction activities, municipal waste transport vehicles, or vehicles of various services

Interestingly, § 14(2) of the Czech Air Protection Act stipulates that a municipality may allow entry to the zone to persons who have a permanent or temporary residence within its boundaries. This means, therefore, that *de facto* entry of vehicles that do not meet emission standards would be allowed, but only if the residence condition is met.

The scope of the general measure establishing a low-emission zone is defined in § 14(3) of the Czech Air Protection Act. According to its provisions, the area of a low-emission zone, the emission category of the road motor vehicles allowed to enter and the method of marking the road motor vehicle that enters the zone are defined.

[60] It should be noted that the legislation on this issue underwent considerable changes in 2017. See CHÁBOVÁ, N., KOMÁROVÁ, K. In: JANČÁŘOVÁ I., HANÁK J. a col., Auta, auta, auta… a životní prostředí., Brno: Masarykova univerzita, 2019, p. 59 *ff*. Cf. KŘEČKOVÁ, M., Nízkoemisní zóny jako nový nástroj zlepšení kvality ovzduší. České právo životního prostředí, č. 2 (2012), p. 71, ISSN: 1213-5542.

[61] For more, see Section 14 of the Czech Air Protection Act. See also the methodological manual on the designation of low-emission zones (availiable at: https://www.mzp.cz/C1257458002F0DC7/cz/doprava/$FILE/OOO-MP_NEZ_Vestnik-20190708.pdf, cit. 2024.02.15). In the Czech Republic, no such zone has yet been designated.

[62] PONIATOWSKI, P. , RADECKI, W., Samochód…, p. 96.

[63] For more, see § 14 (6-8) of the Czech Air Protection Act and Government Regulation No. 280/2020 on establishing rules for the classification of road motor vehicles into emission categories and emission placards [*Nařízení vlády č. 280/2020 Sb.Nařízení vlády o stanovení pravidel pro zařazení silničních motorových vozidel do emisních kategorií a o emisních plaketách*].

[64] Příloha č. 8 k zákonu č. 201/2012 Sb. Výjimky z omezení provozu v nízkoemisních zónách.

According to § 14 (3) of the Czech Air Protection Act, it will only be possible to establish this zone if there is another motorway or road of the same or higher class of the same or neighbouring municipality outside the low emission zone or outside the built-up area, through which a similar traffic connection can be provided. Regarding the interpretation of this provision, two positions can be noted in the literature. The first maintains that there must be a bypass through which it is possible to carry traffic outside the low emission zone or outside the built-up area of the municipality, without burdening the built-up part of the neighbouring municipality with bypasses.[65] The second position, expressed by J. Vodiček,[66] points to a possible misinterpretation of the wording of Article 14(3) and the related consequences of the failure to create low emission zones in the Czech Republic, although this is of course not the only reason for their non-establishment.[67] This author focuses on the doubts concerning [*průjezdním úseku dálnice nebo silnice*], stating that if a zone were to be designated for the centre of a village or a specific part, this would not necessarily imply a different routing of communications, as – in his opinion – it is only required if the zone were to be designated for a through section of a motorway or a road (as a road serving mainly as a thoroughfare for freight transport).[68]

Furthermore, § 14(3) stipulates the reciprocal relationship between a low emission zone and a smog event regulation. In the event of a smog situation, the range of emission categories of motor vehicles that will be allowed in the low emission zone for the duration of the smog situation may be further restricted.[69]

§ 14 (5) of the Czech Air Protection Act introduces the possibility of further subject and object exclusions for entry into the zone. The municipality that has established the zone may stipulate that vehicles other than those defined by law may also enter the zone on the basis of a temporary or permanent permit. What is extremely important, the legislator at the same time specifies what are the important reasons that may constitute grounds for issuing such a permit [*povolení*]. These include, inter alia:

a) an illness or a disability which does not meet the conditions for the award of a degree of major disability,
b) the applicant's working hours, which do not allow travel on public transport,

[65] BEJČKOVÁ, P., Zákon o ochraně ovzduší. Komentář, Praga: Wolters Kluwer, 2018, ASPI.

[66] VODIČKA, J., Auta, emise a klima: právní nástroje environmentální regulace, Brno: Masarykova univerzita, 2021, pp. 153-154, https://is.muni.cz/publication/1782981/Vodicka-auta_emise_klima.pdf, [cit. 2024.02.26].

[67] According to J. Vodička, this may also be the disapproval of entrepreneurs, who fear the loss of income associated with a decrease in traffic in the zone, especially as there have also been calls for entry into the zone to be charged. Ibidem, p. 156.

[68] Ibidem, p. 155.

[69] BEJČKOVÁ, P., Zákon …

c) the need to provide transport of things to a cultural, sporting, social or educational event.

As an aside, it is also worth noting that a temporal prohibition on objections to the act creating the zone has been explicitly introduced in the Act, as the effectiveness of measures of a general nature can be established no earlier than 12 months after their promulgation.[70].

Conclusion

The analysis carried out within the framework of this article has identified a number of practical problems in the application of resolutions concerning the creation of Clean Transport Zones, although the economic and social benefits of such zones can be invaluable.[71]

Following the rationale of the share of electric, hydrogen and natural gas vehicles in the total number of registered vehicles and the ageing vehicle fleet in Poland, CTZs could, in practice, be available, in the absence of an extensive catalogue of subject and/or object exclusions defined by a resolution of the municipal council, only to a really small number of vehicles, or, as the example of the Kraków resolution of 2018 showed, it would be an illusory creation.

In order for these zones to be created in Poland at all, changes would have to be made at the statutory level and the regulations would have to be made more precise in a way that would not raise any doubts. However, this will not solve the problems if the municipalities' decision-making bodies are not diligent when adopting resolutions on the establishment of CTZs e.g. when marking their borders.

The Polish legislator should consider several solutions in the Czech legal order as an example of good legislative practice. It is undoubtedly a transparent solution to stipulate already at the statutory level that entry into a zone can be guaranteed to residents or vehicles of disabled persons, or that the possibility of exceptions in essential cases is introduced, while at the same time specifying what the authority should take into account when issuing such a permit for an exception. This analysis also highlighted likely problems with the creation of low-mission zones in the Czech Republic, which are related not only to the possible disapproval of entrepreneurs for such zones, but also to an incorrect interpretation of Article 14 (3) of the Czech Air Protection Act.

Given the above, it is not expected that these zones will be widely spread in the short term, as not only legislative changes are needed, but also an increase in public awareness among citizens.

[70] See more: VODIČKA, J., Auta…, p. 155.

[71] RYBSKI, R. In: BACH-GOLECKA, D. (eds..), Solidarność…

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About the author:

Ph.D, attorney at law Ewa Radecka

Faculty of Law and Administration, University of Silesia in Katowice,

ul. Bankowa 11 B, 40-007 Katowice, Poland

ewa.radecka@us.edu.pl

ORCID ID-0000-0003-4669-3327

NÍZKOEMISNÍ ZÓNY – KOMENTÁŘE K SOUČASNÉMU PRÁVNÍMU STAVU V POLSKU A ČESKÉ REPUBLICE

Abstrakt: Vytvoření nízkoemisních zón by mohlo být jedním z nástrojů zaměřených na zlepšení kvality ovzduší. Účelem tohoto textu je představit právní předpisy týkající se polských a českých právních předpisů. Jak ukazuje praxe, vznik tohoto typu zón naráží na různé bariéry (od sociálních až po právní). Článek navíc upozorňuje na řadu právních pochybností, jejichž objasnění by mělo být prioritním úkolem zákonodárce, má-li být tento nástroj vůbec použit. Text také zdůrazňuje, že ani sebelepší právní úprava nebude plnit svou funkci, nebude-li správně uplatňována úřady a nebude-li podrobena řádné kontrole. Ke studiu byly použity dogmaticko-právní, statistické a srovnávací metody.

Klíčová slova: ovzduší, ochrana ovzduší, znečištění, čistá dopravní zóna

LOW EMISSION ZONES – REMARKS AGAINST THE BACKGROUND OF THE CURRENT LEGISLATION IN POLAND AND THE CZECH REPUBLIC

Summary: Creating zero-emission zones could be one of the instruments aimed at improving air quality. This text is intended to present legal regulations regarding Polish and Czech legal systems. As practice shows, the creation of this type of zone encounters various barriers (from social to legal). Moreover, the article notes several legal doubts, clarifying which should be a priority task of the legislator if this instrument is to be used at all. The text also emphasizes that even the best legislation will not fulfill its function if the authorities do not correctly apply it and are not subject to proper control. The study used dogmatic-legal, statistical and comparative methods.

Keywords: air, air protection, pollution, clean transport zone