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## A model of introducing Clean Transport Zones in Poland – between optionality and obligatoriness

**Keywords:** local government, clean transport zones, clean air, climate protection

**Summary.** Clean Transport Zones are a novelty in Polish legislation. It is true that the formal possibility of introducing them should be bound by the Act of 11 January 2018 on electromobility and alternative fuels, nevertheless their actual establishment requires the adoption of an act of local law. Its proceedings are lengthy, hence only one such zone has been created so far, in Krakow, in the Kazimierz district, but eventually it was abolished. In the initial text, the act was very strict, the emphasis was placed on zero emissions, hence the municipalities carefully used this instrument. The changes introduced in recent years, which can be considered significant, lead to the question whether the introduction of these zones should not be obligatory, as the deterioration of air quality is an objective value, or whether, as a result of flexibility, leave them optional.

### Model wprowadzania stref czystego transportu w Polsce – między fakultatywnością a obligatoryjnością

**Słowa kluczowe:** samorząd terytorialny, strefy czystego transportu, czyste powietrze, ochrona klimatu

**Streszczenie.** Strefy Czystego Transportu to zagadnienie stanowiące w polskim ustawodawstwie *novum*. Co prawda formalnie możliwość ich wprowadzania wiązać należy ustawą z dnia 11 stycznia 2018 r. o elektro mobilności i paliwach alternatywnych, niemniej ich faktyczne ustanowienie wymaga uchwalenia aktu prawa miejscowego. Jego procedowanie jest długotrwałe, stąd dotychczas powstała tylko jedna taka strefa, w Krakowie, w dzielnicy „Kazimierz”, ostatecznie jednak zniesiona. Ustawa w swym początkowym tekście była bardzo surowa, nacisk został położony na zero emisyjność, stąd też gminy ostrożnie korzystały z tego instrumentu. Poczynione w ostatnich latach zmiany, która uznać można za doniosłe skłaniają jednak do pytania, czy wprowadzanie tych stref nie powinno być obligatoryjne, gdyż pogorszenie jakości powietrza jest wartością obiektywną, czy też w ramach elastyczności pozostawić je fakultatywnymi.

## 1. Introduction

The ever-increasing number of cars driving around Polish cities, especially in city centres, is becoming a growing burden on the inhabitants of these areas. It should be noted that Poland ranks second in Europe, after Luxembourg, in terms of the number of cars per 1000 inhabitants: 747 cars (EU average: 628), while their aver-

age exceeds 14 years (EU average: 11.4)<sup>1</sup>. Even though the numbers presented may not be completely up to date, they clearly indicate the scale of the problem that has arisen. Indeed, there is no doubt that the number of motor vehicles has a direct impact on air quality due to the continuous increase of emissions. This is true for both internal combustion engine vehicles and, or especially, diesel engines. This has an obvious effect on quality of life, although the consequences for human health, as well as that of other living beings, cannot be overlooked either.

To counteract these phenomena, acceptable emission standards have been introduced at EU level and a deadline is now being set for the phasing out of internal combustion engine production. However, these actions are future-oriented, and the situation in Poland requires immediate action. This is confirmed by the WHO guidelines on permissible levels of nitrogen oxides, which are repeatedly exceeded in the largest Polish cities. This phenomenon can be exemplified by the fact that the permissible average annual concentration since 2005 was 40  $\mu\text{g}/\text{m}^3$ , and since 2021 – 10  $\mu\text{g}/\text{m}^3$ , while in the largest Polish cities it exceeds 40 units (Warsaw, Wrocław, Katowice, Kraków). The lowest pollution is currently recorded in Toruń (18  $\mu\text{g}/\text{m}^3$ ); however, many cities still lack communication stations measuring pollution levels (Białystok, Gdańsk, Lublin, Olsztyn, Opole, Poznań, Zielona Góra)<sup>2</sup>.

The transformation currently under way in the battle for clean air is taking place on many fronts. From a few years' perspective, the functioning of the Air Protection Programmes (APPs) adopted by the voivodship assemblies together with the respective strategies can already be assessed<sup>3</sup>, though not necessarily positively<sup>4</sup>. As an aside to the principal considerations, it should be mentioned that in Poland a growing number of lawsuits are being brought before common courts related to exceeding permissible concentrations of harmful substances in the air<sup>5</sup>. Moreover, Polish NGOs, such as Polski Alarm Smogowy, ClientEarth Foundation,

<sup>1</sup> Based on Eurostat and ACEA data: <https://nowiny24.pl/w-przemyslu-najwiecej-samocho-dow-w-calej-polsce-na-tysiac-mieszkancow-to-zasluga-ukraincow-rzeszow-na-22-miejscu/ar/c4-15681681> (accessed on 15 October 2021).

<sup>2</sup> *Stare diesle nie wjadą do miasta*, "Dziennik Gazeta Prawna" of 7 October 2021, no. 195; *Potrzebne większe restrykcje dla samochodów*, "Dziennik Gazeta Prawna" of 27 September 2021, no. 187.

<sup>3</sup> See Article 85 *et seq.* of the Act of 27 April 2001 on Environmental Protection (consolidated text: Journal of Laws of 2020.1219).

<sup>4</sup> *Rządowy spór o finansowanie programów ochrony powietrza*, "Dziennik Gazeta Prawna" of 14 October 2021, no. 200.

<sup>5</sup> See: resolution of the Supreme Court of 28 May 2021, III CZP 27/20, which states that: "Protection of personal goods (Article 23 of the Civil Code in conjunction with Article 24 of the Civil Code and Article 448 of the Civil Code) extends to health, freedom and privacy, which may be violated (threatened) by failure to meet air quality standards prescribed by law"; judgment of the District Court for Warsaw-Śródmieście in Warsaw of 24 January 2019 (VI C 1043/18), judgment of the District Court for the Capital City of Warsaw of 1 October 2019 (II C 661/19); cf. also R. Szczepaniak, *Smog a odpowiedzialność odszkodowawcza władz publicznych*, "Zeszyty Prawnicze Biura Analiz Sejmowych" 2020, vol. 66, no. 2, pp. 26-48.

Stowarzyszenie Nasze Miasto, are becoming more and more active in the fight for clean air. They are even attempting to file administrative complaints about the sluggishness of public administration bodies and their ineffective anti-smog policies<sup>6</sup>. The problem therefore becomes urgent. This is evidenced by the fact that in early February 2021 the European Commission called on Poland to comply with the requirements of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe<sup>7</sup>.

This analysis does not cover all activities related to the fight against smog, but only the issue of the so-called Clean Transport Zones (CTZ), an institution introduced into the Polish legal system by the Act of 11 January 2018 on Electromobility and Alternative Fuels<sup>8</sup> (AEAF), implementing Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the development of alternative fuels infrastructure<sup>9</sup>. It would seem that a widespread introduction of these zones should be a natural consequence of deteriorating air quality, primarily in urban municipalities. However, this issue has proved not so obvious, and the legislature, despite the short time this regulation has been in force, is still looking for optimal solutions.

As an aside to the principal considerations, it is worth mentioning that the reflections on Clean Transport Zones also lead to a more general hypothesis, which, however, will not be developed in this paper. Namely, whether, in view of the challenges of our civilisation, the right to clean air is not becoming a new category of human rights, which could even be classified as first-generation rights – it will be an emanation of the right to life and health, or the right to privacy.

## 2. Designation of CTZ and admissibility of its establishment

The legal basis for the establishment of Clean Transport Zones is provided by Articles 39 and 40 AEAF. Despite the fact that the regulations contained in these provisions are relatively young, having come into force at the beginning of 2018, they have been the subject of further reflection by the legislature and other stakeholders right from the start of their validity, which ultimately led to two important changes within a period of 4 years. The invariable element of CTZs can be considered the purpose of establishing them, which is to prevent negative impact of transportation emissions on human health and the environment. However, other

<sup>6</sup> See *Mieszkańcy mówią dość i skarżą nieskuteczną politykę antysmogową mazowieckich władz*, <https://publicystyka.ngo.pl/mieszkanicy-mowia-dosc-i-skarza-nieskuteczna-polityke-antysmogowa-mazowieckich-wladz> (accessed on 27 October 2021).

<sup>7</sup> OJEU L 152/1-44 of 11 June 2008.

<sup>8</sup> Consolidated text: Journal of Laws of 2021, item 110, as amended.

<sup>9</sup> OJEU L 307 of 28 October 2014, p. 1.

issues are not so obvious. Discussions are held in particular around the designation of areas which would be subject to restrictions or even bans on the movement of certain categories of vehicles. The original text indicated that this would be an area of compact residential development with a concentration of public buildings. Such wording of the provision ensuring considerable flexibility, and above all its abstractness, left a lot of freedom to the municipality. The legal determinants were “compact residential development” and “concentration of public buildings”, which had to be fulfilled jointly. The lack of more precise criteria meant that decisions in this area were discretionary. Consequently, it was for the municipality, after taking into account local conditions, to decide *in casu* on the need for its introduction. There were noticeable difficulties in determining whether both the criterion of “compactness” – the density of housing – was met, and that of sufficient “concentration” of buildings serving the general public. In particular, it should be noted that compact development is characteristic for areas located both in the centres of cities and on their outskirts, which may be an expression of the current trend in spatial planning consisting in increasing housing density (value raised in the National Spatial Development Concept 2030<sup>10</sup>). Furthermore, this provision lacks objective and quantifiable elements, including references to air quality. Only the second premise, relating to public buildings, made it possible to specify the boundaries of the Clean Transport Zone, which, however, did not have to mean that it would only be the downtown area.

Less than half a year after the entry into force of the AEAF, there was a change in this respect, which took place on the occasion of the amendment to the Act of 25 August 2006 on Biocomponents and Liquid Biofuels<sup>11</sup>. The introduced wording of Article 39( ) AEAF was in force until the enactment of the second of the amendments, *i.e.*, 2 December 2021<sup>12</sup>. According to it, a CTZ could be established in a municipality with more than 100,000 inhabitants for an area of inner-city development or its part, being a grouping of intensive development in the city centre, specified in the local spatial development plan, or, in the absence thereof, in the study of conditions and directions of spatial development of the municipality.

Defining the CTZ area in this way clarified its essence while introducing barriers to its establishment. Hence, the changes should be considered momentous. On the one hand, the possibility to introduce these zones has been substantially reduced by indicating the minimum number of inhabitants of the basic local government unit. Its establishment was only possible in urban municipalities with more than

<sup>10</sup> National Spatial Development Concept 2030 (Polish Official Gazette of 2012, item 252).

<sup>11</sup> Article 9(9) of the Act of 6 June 2018 Amending the Act on Biocomponents and Liquid Biofuels and Certain Other Acts (consolidated text: Journal of Laws of 2019, item 1356).

<sup>12</sup> Act of 2 December 2021 Amending the Act on Electromobility and Alternative Fuels and Certain Other Acts (Journal of Laws of 2021.2269).

100,000 inhabitants. At present, there are 37 such municipalities in Poland, while the total number of municipalities is 302 and the number of urban-rural municipalities is 652<sup>13</sup>. Thus, the introduced limitation of municipalities eligible for establishing CTZs determined *a priori* that every municipality with a population of less than 100,000 does not have problems with negative impacts on human health and the environment resulting from transportation emissions, which made one doubt the rationality of the legislature.

On the other hand, an attempt was made to specify the CTZ's area of applicability, *i.e.*, inner-city developments or a part thereof, which are precisely delineated by referring to the basic planning acts, *i.e.*, the said local plans and the study. The term "inner-city development" is recognised in both urban planning and legal language. It is understood as a grouping of intensive development in the city centre, specified in the local spatial development plan, or, in its absence, in the study of conditions and directions of spatial development of the municipality<sup>14</sup>. The study, as an obligatory planning act which all municipalities in Poland already possess, allows for an easy indication of the permissible borders of the CTZ. Nevertheless, the question arises whether it was necessary to formalise this sphere at all, precisely by referring to planning acts.

To conclude, after the first amendment, the premise of intensive development was left in place, but the "concentration of public buildings" was abandoned in favour of an "inner-city development" area. In turn, the second amendment significantly simplified the analysed provision, renouncing the criterion of 100,000 inhabitants, reference to planning acts and linking the CTZ to a specific type of development and city area – it is discussed in more details in the section four of the paper.

### 3. Obligatory versus compulsory establishment of CTZ

The model for introducing CTZs in Poland follows the principle of decentralisation of public administration. This means that their creation remains the responsibility of local government units, specifically the municipality. Moreover, their establishment is not a statutory obligation, but is connected with the municipality's discretionary power to pass a relevant local law act. As indicated in the justification of the draft, "the introduction of zones will not be obligatory, but may make it easier for local governments to fight urban air pollution"<sup>15</sup>. Therefore, as in the

<sup>13</sup> As of 1 January 2021, <https://eteryt.stat.gov.pl/eteryt/raporty/WebRaportZestawienie.aspx> (accessed on 29 October 2021).

<sup>14</sup> § 3(1) of the Regulation of the Minister of Infrastructure of 12 April 2002 on technical conditions to be met by buildings and their location (consolidated text: Journal of Laws of 2019.1065).

<sup>15</sup> Sejm of the 8th term, Sejm paper no. 2147.

case of the local spatial development plan, in principle there is no obligation to adopt them. The absence of such a provision can be seen as a disadvantage from the point of view that the achievement of the goal of minimising transport-related air pollution depends solely on the will of the basic local government unit. This is because the Act does not link these zones to air quality, a measurable and thus objective factor, which would oblige municipalities to introduce such zones after exceeding certain standards. Meanwhile, rational behaviour would require their automatic establishment in an area where the concentration of nitrogen oxides and other harmful substances causes threats to life and health. Consequently, even when quality standards are exceeded several times the creation of such zones is not an obvious consequence of this condition. From this point of view, this certainly puts the institution of CTZ in Poland as ineffective and defunct.

If the above is supplemented by the fact that entry to such a zone is to be allowed only for low- or zero-emission vehicles, then in Polish reality, *i.e.*, with a small number of electric cars and charging stations, its establishment must meet with opposition. An example of the above is the city of Kraków, which so far as the only one in Poland has attempted to introduce such a zone in accordance with the legislature's intention. The resolution was adopted in late December 2018 and included the city's historic downtown district, Kazimierz<sup>16</sup>. In this example, it became apparent that one of the key, and most conflicting, issues is the decision on determining exemptions to the CTZ entry restriction for third parties. The strictly enacted rule was immediately opposed by businesses. As a result of their actions, including legal action (a complaint to the Voivodship Administrative Court<sup>17</sup>), the original resolution was significantly amended as early as March of the following year<sup>18</sup>. First, a time frame for the zone's validity, a *de facto* expiry time, was set. Namely, according to § 2 its validity period was limited to the moment of establishment in Kraków of a downtown paid parking zone<sup>19</sup>, however, not longer than until 31 December 2019 (it was terminated on 22 September 2019). The above suggests that the downtown paid parking zone can be treated as a substitute for the CTZ (*sic!*). Secondly, it obliged the Mayor of Kraków to present an analysis of the

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<sup>16</sup> 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 (Municipal Gazette 2018.8944).

<sup>17</sup> See rulings of the Voivodship Administrative Court in Kraków of 5 June 2019, III SA/Kr 201/19 (CBOSA).

<sup>18</sup> Resolution no. IX/154/19 of the Kraków City Council of 6 March 2019 on amending the resolution no. III/27/18 of the Kraków City Council of 19 December 2018 on the establishment of the "Kazimierz" Clean Transport Zone (Municipal Gazette 2019.2344).

<sup>19</sup> See Article 13a(2) of the Act of 21 March 1985 on Public Roads (consolidated text: Journal of Laws of 2021, no. 1376).

effectiveness of the introduced zone by 3 December 2019. Thirdly, and most importantly, a significant modification has been made to the prohibition of the zone entry. Namely, the vehicles of customers and contractors of the businesses were also allowed from 9:00 a.m. to 5:00 p.m., Monday through Friday. Particularly the last exemption in fact made the reviewed CTZ a bogus institution, as the entry exceptions were outlined so broadly that they actually do not constitute any restriction whatsoever. Consequently, enforcement of the general prohibitions introduced became impossible.

The above indicates that the establishment of a CTZ depends on the “courage” and determination of the municipality’s councillors. The current solution therefore puts their future in question, as they will definitely face opposition from local communities, whose voice will certainly be considered. Incidentally, this is a characteristic phenomenon of such zones, hence their implementation requires a difficult balancing of public and individual interests.

High hopes for a change in the current approach were pinned on the amendment of the AEAF, the work on which began in late 2020. The assumptions made in November indicated, among other things, obligatory creation of Clean Transport Zones, at the same time expanding the catalogue of vehicles eligible for entry, including LPG cars. In particular, in Article 39 (1a) it was proposed to introduce an obligation to establish a Clean Transport Zone for municipalities with more than 100,000 inhabitants. As indicated in the draft’s explanatory memorandum, this was intended to help reduce harmful transportation emissions in urban areas where they are highest<sup>20</sup>.

After public consultations, a new draft dated 11 February 2021 was published, but did not proceed for several months. The next version after work in subcommittees was presented on 2 July and made significant changes from the original intent. Finally, the government draft sent to the Sejm on 8 October 2021 no longer included a commitment to the obligatory establishment of CTZs<sup>21</sup>. As we read in the explanatory memorandum, “it was decided to leave a great deal of discretion to the municipality authorities as regards detailed solutions concerning the zone, assuming that the local authorities know best the needs of a given municipality and how they can be addressed by creating a zone” (p. 53).

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<sup>20</sup> [https://pspa.com.pl/wp-content/uploads/2021/04/PSPA\\_nowelizacja\\_ustawy\\_o\\_elektromobilnosci\\_komentarz\\_ekspercki.pdf](https://pspa.com.pl/wp-content/uploads/2021/04/PSPA_nowelizacja_ustawy_o_elektromobilnosci_komentarz_ekspercki.pdf), <https://legislacja.rcl.gov.pl/projekt/12340506/katalog/12740110#12740110> (accessed on 20 October 2021).

<sup>21</sup> <https://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-0610-123-21> (accessed on 20 October 2021).

#### 4. The future of CTZs in Poland – towards flexibility

The latest proposals that have finally become law, contained in the government draft of 8 October 2021<sup>22</sup> seem to show that positive changes are taking place in thinking about Clean Transport Zones, which are an evolution rather than a revolution of the original intentions. As we read in the explanatory memorandum, the purpose of the proposed changes is to “clarify the rules regarding the establishment of Clean Transport Zones, the possibility of their establishment in all municipalities, and to define individual entry rights”.

The first noticeable change includes the removal of the restriction on the establishment of CTZs only in municipalities with populations over 100,000. Consequently, any basic local government unit will be able to use this instrument to shape transportation trends<sup>23</sup>. The second change, functionally related to the former, concerns the principles of CTZ designation. As indicated above, the issue was initially sought to be rather formalised through specific necessary prerequisites for its introduction. However, the new solution has departed from this model. In light of the recently introduced changes, each municipality will be able to establish such a zone at any place as long as it is valid on the roads it administers, *i.e.*, primarily municipal roads<sup>24</sup>. As a result, the zone may even cover the entire municipality. This solution should be evaluated positively primarily because it makes it possible to actually counteract the negative impact of pollution emitted by means of transport in every municipality in Poland, and not only in selected ones. In the simplest terms, it will be possible to establish the zones wherever it is required to counteract high concentrations of harmful substances, which does not necessarily have to concern only inner-city developments. On the other hand, the time limit for its establishment, which is a minimum of 5 years, is a debatable solution (Article 39(3) of the draft). As this is an innovative solution, some kind of an episodic regulation, the lack of any guidelines in this respect should be seen as potentially problematic, not fully in line with the assumptions of the amendment for its flexibility. This provision may discourage municipalities from establishing such zones, or it may turn the established zones into bogus institutions, due to significant exemptions from the prohibition of entry. On the other hand, it would

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<sup>22</sup> Government Draft Act to Amend the Act on Electromobility and Alternative Fuels and Certain Other Acts, Sejm paper no. 1633 (<https://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=R-PL&Id=RM-0610-123-21>) (accessed on 10 January 2022).

<sup>23</sup> This solution implements the demands expressed in the declaration for the development of Clean Transport Zones signed by the Union of Polish Metropolises together with the Polish Alternative Fuels Association and local government units.

<sup>24</sup> See Article 19(2) and (5) of the Act of 21 March 1985 on Public Roads (consolidated text: Journal of Laws of 2021, no. 1376).

be worth considering the introduction of obligatory zones for municipalities with population over 100,000.

In addition, the provision was deleted allowing the exclusion of the ban on entry for residents of the CTZ for vehicles with a maximum permissible weight of 3.5 t that they own, hold or use (Article 39(3)(1)(e) AEAF). This issue could be another potential point of contention. Admittedly, the municipality council will have the right to modify this strict rule by defining additional subjective and objective exclusions in the resolution. In this respect, the current provision remains in force, which allows the municipality to flexibly construct prohibitions and orders (Article 39(4) AEAF). Nonetheless, the proposed direction of the amendments deprives CTZ residents of an exemption from its prohibitions by statute in favour of municipal discretion, which may raise legitimate concerns among stakeholders about whether the municipality will exercise this option. In this respect, therefore, the chosen direction of change is, in the extreme, towards zero carbon, which, as a long-term solution, deserves praise, but if introduced today would constitute a significant restriction for the zone inhabitants, it would even be disproportionate.

There are also noticeable changes in the purposes for which the CTZ entry fee can be used. Their scope has been expanded. They may include not only the marking of the zone and purchase of zero emission buses, but also the purchase of streetcars (obviously), or other means of public transport, as well as financing of programmes supporting the purchase of bicycles within the meaning of Article 3(47) of the Act of 20 June 1997 – Road Traffic Law. This provision refers to vehicles equipped with a pedal-operated auxiliary electrical drive powered by a voltage of not more than 48 volts with a rated continuous power of not more than 250 watts, the output of which decreases gradually and drops to zero when the speed exceeds 25 km/h. Changes are also envisaged for the CTZ entry fee. Namely, the stipulation that it can only be charged for driving in the zone between 9:00 a.m. and 5:00 p.m. is abandoned. Consequently, the fee will apply for the entire time the vehicle stays in the zone – a stricter solution.

To make the vehicles authorised to drive in the zone better identifiable, they are required to have a sticker affixed in the bottom left corner of the vehicle's windshield. This follows, as the explanatory memorandum reads, the pattern of some Western European countries. This applies to vehicles considered zero carbon and those using exemptions. A maximum amount of the entry fee (PLN 5) has even been specified.

The new regulation, just as the one currently in force, does not contain provisions on the detailed procedure for passing local law acts such as resolutions on establishing Clean Transport Zones. This issue is in fact part of a broader concern – that of the absence of general procedural rules in this matter, which in prac-

tice means a high degree of procedural discretion, especially by local government units. For we cannot forget that an element of the rule of law is also the procedure by which normative acts are adopted. In relation to the legislative activity of the parliament, this rule took the form of the principle of “correct” (“proper”, “sound”, “reliable”) legislation, which is an emanation of one of the basic principles of the political system – the principle of the rule of law. It is also clear that this principle should apply to generally applicable local laws as well. As far as the local law acts are concerned, the rules of their creation are included in the legal system rather by way of exception. However, if they are already established, their observance determines the legality of the enacted local law act. The flagship example in this respect is the Act of 27 March 2003 on Spatial Planning and Development, which in a way contains a model procedure for the adoption of local spatial development plans<sup>25</sup>. Apart from this example, it is not easy to find other legislation on the subject. An exception in this respect is the establishment of hunting districts<sup>26</sup>, although the introduction of a detailed procedure is only the result of a negative assessment of the hunting law by the Constitutional Tribunal<sup>27</sup>, and not a deliberate action on the part of the legislature. It should also be added that one of the elements of modern democratic systems is public participation, which is expressed in the case of acts of local law by the obligation to hold public consultations<sup>28</sup>.

From this point of view, the analysed amendment should be assessed unequivocally positively, as the proposed solutions are the first step towards meeting these requirements. Indeed, apart from the laconic and also debatable reservation<sup>29</sup> that the resolution on CTZ is a local law act, elements of public participation were introduced into the Act. Hence, the residents of the municipality must be consulted on the draft resolution. It is first posted on the municipality’s website (it is not clear why it is not published in the customary manner and by public notice) and then there is a minimum 21-day period for submitting “comments”. After considering them, the head of the municipality, town mayor or city president passes the draft resolution to the municipality council. The “comments” can therefore be submitted, they do not have to be taken into account and finally they have to be

<sup>25</sup> Consolidated text: Journal of Laws of 2021, item 741, as amended.

<sup>26</sup> See Article 27 of the Act of 13 October 1995 – Hunting Law (consolidated text: Journal of Laws of 2020, item 1683, as amended).

<sup>27</sup> Sentence of the Constitutional Tribunal of 10 July 2014, P 19/13, OTK-A 2014/7/71.

<sup>28</sup> See S. Pawłowski, *Konsultacje obligatoryjne i fakultatywne w ustawie o planowaniu i zagospodarowaniu przestrzennym a zakres uspołecznienia procesów planowania przestrzennego*, RPEiS 2015, no. 1, pp. 203-2017.

<sup>29</sup> In the doctrine, negative opinions are repeatedly formulated on the *a priori* assumption that resolutions of local government units are universally binding. Their nature should be determined by an assessment of their content and not by formal declarations of the legislature, see, for example, T. Bąkowski, *Wywłaszczenie krajobrazowe*, “Nieruchomości” 2019, no. 2, p. 51.

considered. Certainly, the indicated public consultations should be supplemented by at least one more element: public discussion, because it is in it, as an interactive instrument, that the call for participation in law making and arguing for adopted solutions is most fully achieved. In addition, as the majority of residents will be affected by restrictions or bans on entry, they are, by definition, the most interested in the final shape of the regulations.

The above leads to the conclusion that the previous CTZ regulation was too rigid and lacked flexibility. This is pointed out explicitly in the explanatory memorandum to the draft, claiming that other European countries have more lenient restrictions on entry to such zones (81/p. 30).

## 5. Conclusions

The general observation that arises in relation to the Polish model of establishing Clean Transport Zones is that its approach is too rigorous. It is manifested in the fact that the emphasis is on total zero carbon, *i.e.*, on the entry of electric, hydrogen or natural gas-powered vehicles (Article 39(1) AEAF). In view of the fact that very few vehicles of this type are driven on public roads, this approach raises legitimate objections from local communities and businesses within these zones. Thus, there is a noticeable lack of a progressive approach manifested in adapting the CTZs to broader local conditions – perhaps this is where the emphasis should be. An explanation for this state of affairs may be that in Europe, these types of zones began to be introduced more than a decade ago, and national regulation wants to catch up quickly. However, it seems that this is not the right way to go. Especially since the first zones were not Clean Air Zones, but rather Low Emission Zones (LEZ)<sup>30</sup>. The purpose of the latter is to keep the most polluting vehicles out of traffic. Only after this goal has been achieved can stricter regulations be phased in. Yet, hybrid cars, which would naturally be an intermediate step towards zero carbon, are excluded from entering the CTZs. The current approach makes it unlikely that any municipal government would risk conflict with residents and voters at the same time. It is worth mentioning that the LEZ project was under consideration in Poland a few years ago but was not adopted. It is also worth mentioning that it was not until 8 April 2019 that Ultra Low Emission Zones were introduced in London; now, they are being extended<sup>31</sup>. Similar demands were made during public

<sup>30</sup> Attempts to introduce them in Poland 2017 were unsuccessful, amendment to the Act on Environmental Protection, Sejm paper no. 1199, Sejm of the 8th term (<https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?id=7CDDD9DEBAC540C0C12580A6002D35CB>) (accessed on 29 October 2021).

<sup>31</sup> <https://news.sky.com/story/londons-ultra-low-emission-zone-just-got-bigger-is-your-area-affected-12443458> (accessed on 29 October 2021).

consultations of the current draft by NGOs, which requested, among others, the possibility of creating the so-called zones within the zone. The example of the city of Kraków shows that the intermediate stage can hardly be avoided.

## References

- Pawłowski S., *Konsultacje obligatoryjne i fakultatywne w ustawie o planowaniu i zagospodarowaniu przestrzennym a zakres uspołecznienia procesów planowania przestrzennego*, "Ruch Prawniczy Ekonomiczny i Socjologiczny" 2015, no. 1.
- Szczepaniak R., *Smog a odpowiedzialność odszkodowawcza władz publicznych*, "Zeszyty Prawnicze Biura Analiz Sejmowych" 2020, vol. 66, no. 2.

## Legal Acts

- Sentence of the Constitutional Tribunal of 10 July 2014, P 19/13, OTK-A 2014/7/71.
- Resolution of the Supreme Court of 28 May 2021, III CZP 27/20.
- Rulings of the Voivodship Administrative Court in Kraków of 5 June 2019, III SA/Kr 201/19 (CBOSA).

## Popular Science Magazines

- Potrzebne większe restrykcje dla samochodów*, „Dziennik Gazeta Prawna” z 27 września 2021, nr 187.
- Rządowy spór o finansowanie programów ochrony powietrza*, „Dziennik Gazeta Prawna” z 14 października 2021, nr 200.
- Stare diesle nie wjadą do miasta*, „Dziennik Gazeta Prawna” z 7 października 2021, nr 195.

## Internet Sources

- <https://legislacja.rcl.gov.pl/projekt/12340506/katalog/12740110#12740110> (accessed on 20.10.2021).
- <https://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-0610-123-21> (accessed on 20.10.2021).
- <https://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-0610-123-21> (accessed on 20.10.2021).
- <https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?id=7CDDD9DEBAC540C0C12580A6002D-35CB> (accessed on 29.10.2021).
- <https://nowiny24.pl/w-przemyslu-najwiecej-samochodow-w-calej-polsce-na-tysiac-mieszkancow-to-zasluga-ukraincow-rzeszow-na-22-miejscu/ar/c4-15681681> (accessed on 15.10.2021).
- <https://publicystyka.ngo.pl/mieszkanicy-mowia-dosc-i-skarza-nieskuteczna-polityke-antysmogowa-mazowieckich-wladz> (accessed on 27.10.2021).
- <https://news.sky.com/story/londons-ultra-low-emission-zone-just-got-bigger-is-your-area-affected-12443458> (accessed on 29.10.2021).