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The Legal Basis for Protection against Road Traffic Noise (with Particular Emphasis on the Preparation and Implementation of Road Project and the Stage of Road Operation)

Prawne podstawy ochrony przed hałasem drogowym (ze szczególnym uwzględnieniem przygotowania i realizacji inwestycji drogowej oraz etapu eksploatacji dróg)

ABSTRACT

The article discusses the regulations under which information on the state of the environment is collected, which can be used at the stage of planning, designing, constructing and operating roads (state environmental monitoring, programmes of environment protection against noise, strategic noise maps). It also addresses the issue of protection against road traffic noise at the stage of road design, construction and alteration, as well as at the stage of road operation. It also identifies environmental protection authorities that play an important role in the context of supervising compliance with noise protection regulations, and briefly discusses the legal remedies available to people exposed to excessive road traffic noise.

Keywords: road traffic noise; protection against road traffic noise; legal basis for protection against noise; road project

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INTRODUCTION

The article is the result of research into the legal regulations relating to road traffic noise protection. It complements an earlier paper which discussed the "general part" of the system of regulations concerning road traffic noise protection.[1] This paper focuses on more specific issues, mainly concerning the preparation and implementation of road project, as well as those related to ensuring an appropriate acoustic climate at the stage of road operation. These considerations are preceded by an overview of solutions intended to obtain information about the state of the environment, which may be used at the stages of planning, designing, constructing and operating roads.

As regards the research method adopted, it has already been described in the aforementioned publication.[2] At this point, it can be pointed out once again that I have used the dogmatic legal method of analysing in a multifaceted perspective the provisions relating to road traffic noise protection.

DETAILED ISSUES RELATED TO ROAD TRAFFIC NOISE PROTECTION

1. State Environmental Monitoring

State Environmental Monitoring (SEM) is a system for measuring, assessing and forecasting the state of the environment and the collection, processing and dissemination of information on the state of the environment; it is the main source of data and information on the condition of the environment in Poland (Article 23 (2) and (3) AIEP[3]). The SEM supports actions to protect the environment by systematically informing the public and authorities about: 1) the condition of elements of nature, compliance with environmental quality standards specified by the regulations (i.e. including environmental noise limits) and the limits referred to in Article 3 (28) (b) and (c) EPL,[4] and the areas in which these standards and levels

[1] See P. Poniatowski, *The Legal Basis for Protection against Road Traffic Noise: An Outline of the Issue. Part One*, "Studia Iuridica Lublinensia" 2022, vol. 31(1). This publication discusses the problem of environmental noise, with particular emphasis on road traffic noise, as well as the permissible noise levels set out in the Annex to the Regulation of the Minister of Environment of 14 June 2007 on permissible noise levels in the environment (consolidated text, Journal of Laws 2014, item 112). Entities responsible for road traffic noise protection were also identified.

[2] See *ibidem*, p. 138.

[3] Act of 20 July 1991 on the Inspectorate of Environmental Protection (consolidated text, Journal of Laws 2024, item 425).

[4] Act of 27 April 2001 – Environment Protection Law (consolidated text, Journal of Laws 2024, item 54).

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are exceeded; 2) changes in the state of elements of nature and the causes of such changes, including cause-and-effect relationships between emissions and the state of elements of nature (Article 23 (10) AIEP).

The SEM collects data and information about the condition of natural elements, obtained through monitoring of, among other things, acoustic climate (Article 23 (11) (4) AIEP).[5] The scope of responsibilities of the SEM is specified in multi-annual strategic programmes of the state environmental monitoring and executive programmes of the state environmental monitoring, which is prepared by the Chief Inspector of Environmental Protection (Article 23 (18) and (19) AIEP).[6] Information about the environment and its protection covered by the state environmental monitoring are collected by the Chief Inspector of Environmental Protection (Article 25 AIEP).

The data on the condition of the environment generated through the SEM is a source of information necessary for the current management of the environmental resources, carrying out assessments of the condition of particular environmental components, observing and analysing long-term trends in the environment and carrying out multi-aspect integrated assessments of the condition of the environment associated with socio-economic changes.[7]

As part of the SEM, the Chief Inspector of Environmental Protection assesses the acoustic condition of the environment and observes changes in the areas: 1) referred to in Article 118 (2) EPL – based on strategic noise maps or results of measurement of noise levels expressed as the noise indicators $L_{Aeq\ D}$, $L_{Aeq\ N}$, L_{DWN} and L_N,[8] taking into account in particular demographic data and data on the manner of land development and use; 2) other than the areas referred to in Article 118 (2) EPL, based on the results of measurements of the noise levels expressed as the noise indicators $L_{Aeq\ D}$, $L_{Aeq\ N}$, L_{DWN} and L_N or other methods of noise level assessment (Article 117 (1) EPL). The Chief Inspector of Environmental Protection maintains a register containing information on the acoustic condition of the envi-

[5] The data and information in question shall be obtained based on: 1) the monitoring conducted by the Chief Inspector of Environmental Protection; 2) measurements of emissions or other conditions of use of the environment, as well as records that entities using the environment are obliged to keep under provisions of law or administrative decision; 3) the monitoring other than listed in item 1 and data and information other than listed in item 2, obtained for a fee or free of charge from entities that are not public administration bodies; 4) the data and information obtained from public administration bodies in connection with their activities; 5) the data and information obtained from other entities (Article 23 (12) AIEP).

[6] The Strategic Programme of the State Environmental Monitoring for the years 2020–2025 (*Strategiczny program państwowego monitoringu środowiska na lata 2020–2025*) is available at https://www.gios.gov.pl/images/dokumenty/pms/pms/PPMS_2020-2025_OSTATECZNY.pdf (access: 7.9.2023).

[7] *Ibidem*, p. 6.

[8] These indicators have been described in Part One of this article. See P. Poniatowski, *The Legal Basis…*, pp. 140–141.

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ronment based on the measurements, tests and analyses performed as part of state environmental monitoring (Article 120a (1) EPL). Moreover, the road operator is obliged to submit to the environmental protection authority and the Chief Inspector of Environmental Protection the results of the periodic measurements of the levels of energy in the environment introduced due to the operation of the road, referred to in Article 175 EPL.[9]

2. Strategic noise maps

Strategic noise maps are the basic source of data used to inform the public about environmental hazards from noise, to prepare data for the SEM, to draft and update programmes of environmental protection against noise, strategic planning, spatial planning and development (Article 118 (1) EPL). They shall be drawn up every 5 years to perform an overall assessment of the exposure to noise from various sources in a specific area or for the purpose of general forecasting for a given area, e.g. for cities with a population of more than 100,000 and for main roads[10] (Article 3 (35a) and Article 118 (2) and (4) EPL).[11] This obligation was imposed due to the fact that usually they are places with the highest levels of road traffic noise. Strategic noise maps are immediately posted on the websites of the entities that prepared them.[12] They contain information important from the point of view of protection against noise, including in particular: identification and characteristics of noise sources, identification of areas at risk of noise, indication of numerical data on the population exposed to noise, analysis of the directions of change in the acoustic condition of the environment, assessment of the harmful effects of noise, proposed measures in the field of protection against noise, the effects of planned activities in the field of noise protection, information on the developed and implemented programmes of environment protection against noise and estimation of the effects of the implemented measures in the field of noise protection (Article 118 (6) EPL).

[9] Article 177 (1) EPL in conjunction with § 2 (2) (a) of the Regulation of the Minister of Environment of 17 January 2003 on the types of measurement results conducted in connection with the operation of roads, railway lines, tramway lines, airports and ports, which should be submitted to competent environmental authorities, as well as the time limits and methods of their presentation (Journal of Laws 2003, no. 18, item 164).

[10] Main road is a road with more than 3 million vehicles passing a year (Article 112a (2) EPL).

[11] The obligation to draw up these maps is the responsibility of main road operators and mayors (presidents) of cities with a population of more than 100,000 (Article 118 (3) EPL).

[12] For example, see strategic noise map drawn up in 2022 for Warsaw available at https://mapa.um.warszawa.pl/mapaApp1/mapa?service=mapa_akustyczna (access: 7.9.2023). Before 14 November 2019, the regulations of the EPL referred to acoustic maps, not strategic noise maps. This modification was an adaptation of the nomenclature to Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (OJ L 189/12, 18.7.2002, as amended).

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Pursuant to Article 118 (10) EPL boundaries of areas covered by strategic noise maps due to the operation of main roads are defined by boundary lines overlapping with isolines corresponding to values of long-term average sound level A expressed in decibels (dB), determined for all: 1) days of the year – L_{DWN} as 55; (2) nights per year – L_N as 50. This is because Directive 2002/49/EC, when defining minimum requirements for the drawing up of strategic noise maps (see Annex IV) refers to a noise level according to L_{den} (the equivalent of the Polish L_{DWN}) of at least 55 dB and a noise level according to L_{night} (the equivalent of the Polish L_N) of at least 50 dB (see Annex VI). Noise levels exceeding these values constitute "high noise levels" within the meaning of Decision No. 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet".[13]

Strategic noise maps have several functions. Firstly, they form a basis for the assessment of the acoustic state of the environment by the Chief Inspector of Environmental Protection as part of the SEM and observation of changes for the areas for which such maps are drawn up (Article 117 (1) (1) EPL). Secondly, they form a basis for the development of programmes of environment protection against noise (Article 119a (1) EPL). Thirdly, the limitations resulting from strategic noise maps are taken into account in the local spatial development plan and in the decision on the conditions for land development (Article 73 (1) (2b) EPL).

3. Programmes of environment protection against noise

The programme of environment protection against noise is a programme designed for the management of noise emissions and effects, including the purpose of noise reduction (Article 3 (30a) EPL). The programme identifies the environmental noise reduction measures presented in the strategic noise maps: (1) implemented, (2) planned to be implemented within 5 years, and (3) planned to be implemented in the long term – taking into account the number of inhabitants in the area covered by the programme and the ecological effectiveness and economic efficiency of the activities under the programme (Article 119a (3) EPL). The proposed resolution on a programme of environment protection against noise for the voivodeship area is drafted by the marshal of the voivodeship on the basis of strategic noise maps (Article 119a (1) EPL). The marshal of the voivodeship ensures public participation in the development of the programme of environment protection against noise in compliance with the rules and procedures laid down in the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in the protection of the environment and on environmental impact

[13] OJ L 354/171, 28.12.2013.

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assessments[14] (Article 119a (5) EPL). The programme of environment protection against noise is adopted by the regional assembly every 5 years, but it can be updated before the expiry of that period (Article 119a (9) and (10) EPL).

4. Protection against road traffic noise at the stage of preparing and implementing a road project

Protection against noise should be taken into account at the stage of road design, obtaining appropriate administrative decisions, construction or alteration of the road,[15] as well as putting the constructed or altered road into use. Anticipating appropriate acoustic protection solutions at the early stages of preparing a road project allows avoidance of problems related to noise which may arise in connection with the operation of the road (e.g. it is easier and cheaper to build noise barriers during the construction of a road than when it is already in use).

The requirement for the application of appropriate protective measures stems from the general rule expressed in Article 5 (1) (1) (e) of the Construction Law,[16] pursuant to which a construction object (including a road – see Article 3 (1), (3) and (3a) of the Construction Law) as a whole and its individual parts, together with the related construction equipment, must be designed and built as specified in the regulations, including technical and construction regulations, and in accordance with the rules of construction technology, ensuring that the basic requirements for construction objects set out in Annex I to Regulation (EU) No. 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC[17] concerning, i.a., protection against noise. The Annex states that construction objects must be designed and built in such a way that noise perceived by the occupants or people nearby is kept to a level that will not threaten their health and will allow them to sleep, rest and work in satisfactory conditions. The Construction Law also indicates that, when designing and constructing a construction object, it must be ensured that the legitimate interests of third parties occurring

[14] Consolidated text, Journal of Laws 2023, item 1094, as amended, hereinafter: API.

[15] The construction of a road is the making of a road connection between certain places or localities, as well as its reconstruction and extension (Article 4 (17) of the Act of 21 March 1985 on public roads, consolidated text, Journal of Laws 2024, item 320, hereinafter: APR). Whereas the alteration of a road is the performance of works resulting in an increase in the technical and operational parameters of an existing road, which does not require a change in the limits of the road lane (Article 4 (18) APR).

[16] Act of 7 July 1994 – Construction Law (consolidated text, Journal of Laws 2023, item 682, as amended).

[17] OJ L 88/5, 4.4.2011, as amended.

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in the construction object's impact zone are respected (Article 5 (1) (9) of the Construction Law). This includes protection against nuisance caused by noise.[18]

According to § 9 (1) of the Regulation of the Minister of Infrastructure of 24 June 2022 on technical and construction regulations for public roads,[19] the road should meet, during the life cycle of the road, at least the basic conditions concerning the protection of human health and the environment, including protection against noise. The life cycle of a road is the successive phases of the road's existence, in particular design, execution of construction works, use, decommissioning and demolition (§ 4 (1) of the Regulation in question). The condition of environmental protection, including protection against noise, is fulfilled by limiting the impact of the road on the environment in accordance with environmental regulations (§ 9 (3) of the Regulation in question). This involves designing and constructing the road in such a way that its operation does not cause the permissible levels of noise in the environment set out in the Annex to the Regulation of the Minister of Environment of 14 June 2007 on permissible noise levels in the environment to be exceeded. Protection against pollution from road operation must be ensured by the application of technical solutions limiting the spread of pollutants, in particular acoustic safeguards,[20] and by establishing an appropriate organisation of traffic (Article 173 EPL).[21]

An important role in ensuring appropriate noise levels in acoustically protected areas after a road has been put into operation is played by the regulations contained in the API and in the Act of 10 April 2003 on special rules for the preparation and

[18] M. Peljan, *Ochrona interesu indywidualnego w postępowaniu administracyjnym dotyczącym lokalizacji i budowy dróg publicznych – na podstawie przepisów tzw. specustawy drogowej*, Poznań 2014, p. 55. See also T. Asman, Z. Niewiadomski, [in:] *Prawo budowlane. Komentarz*, ed. Z. Niewiadomski, Warszawa 2022, commentary on Article 5, marginal number 4, as well as Article 5 (2) of the Construction Law as it stood prior to 11 July 2003.

[19] Journal of Laws 2022, item 1518.

[20] It should be noted that in accordance with item 1 of Annex 4 to the Regulation of the Minister of Infrastructure of 3 July 2003 on detailed technical conditions for road signs and signals and road safety devices and conditions for their placement on roads (consolidated text, Journal of Laws 2019, item 2311, as amended), noise barriers, earth embankments, and road cross-section enclosures are used to protect against noise from road traffic.

[21] On technical and organisational methods of protection against road traffic noise, see J. Bohatkiewicz, *Modelowanie i ocena rozwiązań chroniących przed hałasem drogowym*, Lublin 2017, pp. 75–130; W. Gardziejczyk, *Wybrane problemy ochrony przed hałasem drogowym*, "Inżynieria Ekologiczna" 2015, vol. 45, pp. 82–88; idem, *Hałaśliwość nawierzchni drogowych*, Białystok 2018, pp. 23–25; P. Gierasimiuk, M. Motylewicz, *Hałas w otoczeniu dróg i ulic – problemy oceny i działania ochronne*, [in:] *Inżynieria środowiska – młodym okiem*, vol. 7: *Uwarunkowania sanitarno-inżynieryjne*, eds. I. Skoczko, J. Piekutin, A. Zarzecka, Białystok 2014, pp. 76–79; M. Dębiński, J. Bohatkiewicz, M. Motylewicz, *Ochrona przed hałasem drogowym z wykorzystaniem zarządzania ruchem drogowym*, "Materiały Budowlane" 2023, no. 8, pp. 34–37; M. Szruba, *Ochrona przed hałasem komunikacyjnym*, "Nowoczesne Budownictwo Inżynieryjne" 2020, no. 5, pp. 76–79.

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implementation of investments in the field of public roads.[22] The SPPR sets out the rules and conditions for the preparation of projects in the field of public roads within the meaning of the APR, as well as the authorities competent in these matters. Its purpose is to simplify and accelerate procedures for the preparation and implementation of projects in the field of public roads.

According to the SPPR, the document constituting the basis for the implementation of a road project is the decision on the permit for the implementation of a road project (hereinafter: ZRID decision). However, prior to obtaining it, it is necessary to issue a decision on environmental conditions (hereinafter: environmental decision), which determines the environmental conditions for the implementation of the project[23] (Article 72 (1) (10) and Article 71 (1) API). Obtaining such a decision is required for the planned projects that may always have a significant impact on the environment and planned projects that may potentially have a significant impact on the environment (Article 71 (2) API). Projects that may always have a significant impact on the environment include motorways and expressways, also other roads with at least four lanes and a length of at least 10 km in one section, as well as modification of the route or extension of the existing road with two lanes of traffic at least up to four lanes at a length of not less than 10 km in one section (§ 2 (1) (31) and (32) of the Regulation of the Council of Ministers of 10 September 2019 on projects which may have a significant impact on the environment).[24] On the other hand, projects that may potentially have a significant impact on the environment include hard-surfaced roads with a total project length of more than 1 km other than the above-mentioned, or bridges forming part of a hard-surfaced road, with the exception of the alteration of roads or bridges used to service power stations and located outside areas covered by forms of nature protection (§ 3 (1) (62) of the above-mentioned Regulation). Projects that may always have a significant impact on the environment and projects that may potentially have a significant impact on the environment include, under certain conditions, also projects involving the extension or alteration of the above-mentioned projects (roads) being implemented or completed.[25] The authority competent to issue the environmental decision is the regional director for environmental protection – in the case of roads which are projects that may always have a significant impact on the environment, or the village mayor, town mayor, city president – in the case of other roads (Article 75 (1) (1) (a) and (1) (4) API).

[22] Consolidated text, Journal of Laws 2024, item 311, hereinafter: SPPR.

[23] Project is a construction undertaking or other interference in the environment involving the transformation or change in the way of using the land (Article 3 (1) (13) API).

[24] Journal of Laws 2019, item 1839, as amended.

[25] See § 2 (2) and § 3 (2) of the Regulation in question.

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As part of the procedure for issuing the environmental decision, the assessment of the environmental impact of the project is carried out (Article 61 (1) (1) API), which includes in particular verification of the report on the environmental impact of the project, obtaining opinions and arrangements required by the Act, ensuring the possibility of public participation in the procedure[26] (Article 3 (1) (8) API). Carrying out the environmental impact assessment of the project is obligatory in the case of a planned project that may always have a significant impact on the environment (Article 59 (1) (1) API). However, in the case of a planned project that may potentially have a significant impact on the environment, such an assessment is carried out if the obligation to carry it out was stated by the authority competent to issue the environmental decision (Article 59 (1) (2) and Article 63 (1) and (3) API). The assessment of the environmental impact of the project, which is part of the procedure for issuing the environmental decision, is carried out by the authority competent to issue this decision (Article 61 (2) API). If the assessment of the environmental impact of the project is carried out, before issuing the environmental decision, the authority competent to issue it agrees the conditions for the implementation of the project with the regional director for environmental protection (Article 77 (1) (1) API). The regional director for environmental protection agrees on the implementation of the project and determines the conditions of such implementation and presents his position on the necessity to carry out the assessment of the environmental impact of the project within the proceedings on the issuance of the ZRID decision (Article 77 (4) API).

In the environmental decision, issued after the assessment of the environmental impact of the project, the competent authority shall determine, i.a., the essential conditions for using the environment at the stage of implementation and operation or use of the project, with particular emphasis on the need to protect valuable natural assets, natural resources and monuments, as well as reduction of nuisance to neighbouring areas, as well as environmental protection requirements to be included in the documentation required to issue the decision referred to in Article 72 (1) API (i.a. the decision on the permit for the implementation of a road project or the decision on a construction permit; this includes, e.g., the need to build noise barriers; Article 82 (1) (1) API). The competent authority may impose on the applicant the obligation to present the post-implementation analysis, specifying its scope and deadline for its presentation and indicating other bodies to which it should also be presented (Article 82 (1) (5) API). It is very important to carry out such an analysis

[26] Pursuant to Article 79 (1) API, prior to issuing a decision on environmental conditions, the authority competent to issue such a decision shall ensure the possibility of public participation in the proceedings as part of which it conducts an assessment of the impact of the project on the environment.

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for road projects in order to assess the effectiveness of the solutions implemented to ensure adequate noise protection.[27]

The assessment of the environmental impact of the project is also carried out as part of the proceedings for the issuance of the ZRID decision, if the need for such an assessment has been established by the authority competent to issue the environmental decision,[28] and in the cases referred to in Article 88 (1) API, this is, i.a., at the request of the entity planning to implement the project, submitted to the authority competent to issue the decision, or if the authority competent to issue the ZRID decision establishes that in the request for the issuance of this decision, changes have been made to the requirements specified in the environmental decision (Article 61 (1) (2) API). If the necessity to carry out the assessment of the environmental impact of a project again was stated in the environmental decision, the entity planning to implement the project shall submit the report on the environmental impact of the project (Article 88 (1a) API). If the assessment of the environmental impact of the project is carried out at the request of the entity planning to implement the project, the entity shall submit the report on the environmental impact of the project together with the request (Article 88 (2) API). When the decision to carry out the assessment of the environmental impact of the project is made by the authority competent to issue the ZRID decision, it states the obligation to prepare the report on the environmental impact of the project, determining at the same time the scope of the report (Article 88 (3) API). Upon receipt of the report on the environmental impact of the project, the authority competent to issue the ZRID decision shall apply to the regional director for environmental protection or the General Director for Environmental Protection for agreement on the conditions of project implementation (Article 89 (1) API). After carrying out the assessment of the environmental impact of the project, the environmental protection authority issues a resolution on agreeing the conditions of project implementation, which binds the authority competent to issue the ZRID decision (Article 90 (1) and Article 92 API).

At the request of the road operator, the competent authority (the voivodeship governor with respect to national and voivodeship roads, or the district head who performs tasks delegated from the scope of government administration with respect

[27] In accordance with Article 83 (1) API, such an analysis compares the findings contained in the report on the environmental impact of the project and in the decision on environmental conditions, in particular the findings regarding the predicted nature and extent of the environmental impact of the project and the planned preventive measures with the actual environmental impact of the project and the measures taken to reduce it.

[28] The authority competent to issue the environmental decision states the necessity to carry out the assessment of the environmental impact of the project within the proceedings on the issuance of the ZRID decision if, i.a., the data available at the stage of issuing the environmental decision do not sufficiently allow for the assessment of its environmental impact or need to be specified within the ZRID decision (Article 82 (1) (4) and (2) (1) API).

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to district and commune roads) issues the ZRID decision, taking into account the conditions for the implementation of the project specified in the decision on environmental conditions and the reconciliation resolution referred to in Article 90 (1) API (Article 93 (1) API and Article 11a (1) SPPR). The ZRID decision includes, i.a., conditions resulting from the needs of environmental protection, as well as approval of the plot or site development plan and the architectural and construction design (which may provide, i.a., for solutions ensuring protection against noise that will be generated in connection with the operation of the road; Article 11f (1) (3) and (7) SPPR). In this decision, the competent authority may impose on the applicant the obligation to submit the post-implementation analysis, specifying its scope and deadline for its submission, as well as amend the environmental protection requirements to be included in the documentation required for the issuance of the ZRID decision, in particular in the plot or site development plan or the architectural and construction design, if the need for the amendment has been identified within the framework of the assessment of the environmental impact of the project (Article 93 (2) (2) and (4) API).

After obtaining the final ZRID decision, the investor may proceed with the implementation of the road project, the final stage of which is the putting of the road into operation, to which, in accordance with Article 32 (1) SPPR, the provisions of the Construction Law are applied. It should be noted that a newly constructed or altered construction object must not be put into operation unless it meets the following environmental requirements: 1) implementation of the technical measures required by law or specified in administrative decisions to protect the environment; 2) applying appropriate technological solutions, resulting from laws or administrative decisions; 3) obtaining required decisions specifying the scope and conditions of use of the environment (Article 76 (1) and (2) EPL). However, the competent construction supervision authority may issue a decision to allow the operation of a road, roadway or road section, despite non-compliance with the environmental protection requirements referred to above, if it finds that the conditions set out in the provisions of the Construction Law have been met (Article 32 (3) SPPR). In this decision, the authority shall set a deadline for the remaining part of the finishing works or other construction works to be carried out and for the environmental protection requirements in question to be met; this deadline may not be longer than 9 months (Article 32 (4) SPPR).

It has been noted in the literature and the judicature that the construction of a public road is possible not only under a "special" procedure – pursuant to the provisions of the SPPR, but also under a "general" procedure – pursuant to general provisions, in particular those contained in the Act of 27 March 2003 on spatial planning and development,[29] but if the investor applies for a permit under the SPPR

[29] Consolidated text, Journal of Laws 2023, item 977, as amended, hereinafter: ASPD.

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procedure, the authorities competent to issue the ZRID decision do not assess the investment project from the perspective of the provisions of the ASPD,[30] including whether the local spatial development plan is in force in the given area and do not examine the compliance of the planned road project with the provisions of the local plan in force in the given area.[31] If the investor chooses the "general" procedure for the preparation and implementation of a road project, environmental protection requirements, e.g. against noise, must also be taken into account (it is primarily about the previously indicated general requirements concerning the design and construction of construction objects, the question of issuing a decision on environmental conditions – Article 71 API, and decision on determining the location of a public purpose project, which specifies, i.a., the conditions and detailed rules of land development and its construction specified in separate provisions, in particular in terms of environmental protection – Article 50 (1) and Article 54 (2) (b) ASPD, as well as verification by the architectural and construction administrative authority, before issuing a decision on granting a construction permit, of the compliance of the plot or site development plan and the architectural and construction design with the environmental protection requirements, in particular those specified in the decision on environmental conditions – Article 35 (1) (1) (b) of the Construction Law).

It should be added that if the investor has chosen the "general" procedure for carrying out a road project, then obtaining a building permit is required for the construction (reconstruction or extension) of a road, while for the alteration of a road the notification referred to in Article 30 of the Construction Law is sufficient (see Article 29 (3) (1) (d) of the Construction Law), which, however, does not exclude the application of the requirements set out in the API (see Article 30 (2a) of the Construction Law). However, the applicability of the SPPR to the alteration of a road may raise doubts. In its judgment of 1 October 2013,[32] the Supreme Administrative Court stated that in Article 1 (1) SPPR the legislature uses a broad concept of "project", which means that the designator of this concept includes not only construction, but also alteration or renovation of a public road.[33] A different

[30] Pursuant to Article 11i (2) SPPR, the provisions on spatial planning and development do not apply in matters concerning the permit for the implementation of a road investment.

[31] See M. Wolanin, *Ustawa o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych. Komentarz*, Warszawa 2021, pp. 10–12; idem, *Specprocedura realizacji inwestycji drogowej, cz. 2*, "Nieruchomości" 2010, no. 5, Legalis; judgment of the Supreme Administrative Court of 27 March 2012, II OSK 208/12, LEX no. 1251906; judgment of the Supreme Administrative Court of 16 April 2019, II OSK 25/19, LEX no. 2678803. See also P. Antoniak, [in:] P. Antoniak, M. Cherka, F. Elżanowski, K.A. Wąsowski, *Przygotowanie i realizacja inwestycji w zakresie dróg publicznych. Komentarz*, Warszawa 2012, commentary on Article 1, thesis 1.

[32] II OSK 1032/12, LEX no. 1559260.

[33] This view was approved in the judgment of the Supreme Administrative Court of 29 October 2019, II OSK 2090/19, LEX no. 2750459, in the judgment of the Voivodeship Administrative Court in Warsaw of 8 May 2019, VII SA/Wa 56/19, LEX no. 2693335 and in the judgment of the Voivodeship

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opinion is held by P. Antoniak, who indicates that the permit for the implementation of a road project provided for in the SPPR – simply speaking – substitutes, with respect to projects in the field of public roads, the building permit, and therefore should not apply to those projects, which by virtue of general provisions are exempted from obtaining it.[34]

5. Protection against road traffic noise at the stage of road operation

The rules provide for the need to ensure noise protection not only at the stages of road design, construction and alteration, but also at the stage of road operation. This concerns both newly constructed, altered and renovated roads, as well as existing ones where traffic has increased enough since their construction to exceed the permissible levels of noise coming from them.

Road operation must not cause any breach of environmental quality standards (Article 174 (1) EPL). The environmental quality standard means the limits for substances or energy and the exposure concentration limit to be achieved within a specified period by the environment as a whole or by its individual natural elements (Article 3 (34) EPL). In the context of road traffic noise, these standards are laid down in the Annex to the Regulation of the Minister of Environment of 14 June 2007 on permissible noise levels in the environment.[35]

Compliance with environmental requirements related to the operation of roads must be ensured by road operators (Article 139 EPL).[36] These operators have an obligation to ensure the best possible acoustic state of the environment, in particular by keeping the noise level below or at least at the permitted level, or by reducing the noise level to at least acceptable when not kept at the permitted level (see Article 112 EPL).

Noise emissions resulting from road operation may not, as a rule, exceed environmental quality standards outside the area to which the road operator has a legal title (Article 174 (2) EPL). This means that permissible noise levels may not be exceeded in any part of the acoustically protected area. According to Article 143 of the Civil

Administrative Court in Szczecin of 28 February 2019, II SA/Sz 1253/18, LEX no. 2639357. See also M. Tetera-Jankowska, *Ustawa o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg publicznych. Komentarz*, LEX/el. 2022, commentary on Article 1, point II, thesis 4.

[34] P. Antoniak, *op. cit.*, commentary on Article 1, thesis 5. See also W. Bryś, *Zakres przedmiotowy tzw. specustawy drogowej*, "Przegląd Prawa Publicznego" 2010, no. 10, pp. 19–21.

[35] J. Jerzmański, [in:] M. Górski, M. Pchałek, W. Radecki, J. Jerzmański, M. Bar, S. Urban, J. Jendrośka, *Prawo ochrony środowiska. Komentarz*, Warszawa 2019, commentary on Article 113, marginal number 2.

[36] See P. Poniatowski, *The Legal Basis…*, p. 144.

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Code,[37] within the limits defined by the socio-economic purpose of land, ownership of the land extends to the space above and below its surface. Real property is a solid figure limited by vertical planes following its boundaries on the surface of the earth, extending to a certain depth and a certain height.[38] In the context of protection against road traffic noise, this means that the whole property to which the road operator does not have the legal title should be acoustically protected, including the buildings located on it (all the floors and facades of these buildings). In short: the impassable barrier for excessive road traffic noise should be the boundary of the real estate, which is an other's property from the point of view of the road operator. This rule should also be taken into account at the stages prior to the operation of the road.

The analysis of the acoustic state of the environment by the road operator may involve, in particular, noise measurements carried out on their own by the residents of the areas adjacent to the road or by the Regional Environmental Protection Inspectorate at the request of residents, or measurements carried out as part of the post-implementation analysis referred to above in the context of regulations of the API. It should also be noted that the road operator is obliged to periodically measure the environmental levels of substances or energy being introduced due to its operation (Article 175 (1) EPL). These measurements are supposed to be carried out every 5 years to determine the value of noise levels in the environment, expressed by the indicators $L_{Aeq\,D}$, $L_{Aeq\,N}$, covering a period of at least one day, introduced in connection with the operation of public roads with an average annual traffic rate of more than 3 million vehicles or with above 20% share of heavy vehicle traffic in the traffic flow in the case of average daily traffic exceeding 5,000 vehicles.[39] Moreover, in the event of a road reconstruction which essentially alters the operating conditions, the road operator is required to measure the levels of substances or energy introduced in the environment due to operation of the road (Article 175 (3) EPL). This obligation must be fulfilled no later than within 14 days from the commencement of operation of the reconstructed road (Article 175 (4) EPL). However, as far as national roads are concerned, this obligation should be fulfilled within 12 months from the date of commencement of operation of the reconstructed road, and if the authority imposed an obligation to carry out a post-implementation analysis required by the provisions of the API – within the time limit provided for the performance of this analysis (Article 175 (4a) EPL). Regardless of the obligations to perform the measurements referred to in Article 175 (1) and (3) EPL, the

[37] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2023, item 1610, as amended).

[38] J. Ignatowicz, K. Stefaniuk, *Prawo rzeczowe*, Warszawa 2006, p. 73.

[39] See § 3 of the Regulation of the Minister of the Environment of 16 June 2011 on the requirements for measuring the levels of substances or energy in the environment by the operator of a road, railway line, tram line, airport or port (Journal of Laws 2011, no. 140, item 824, as amended).

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environmental protection authority may impose on the road operator the obligation to conduct, within a specified period of time, measurements of the levels of substances or energy in the environment being introduced due to road operation, if the conducted tests of the levels of substances or energy in the environment, which are emitted in connection with the operation of the road, prove that the environment quality standards are exceeded (Article 178 (1) EPL).

At the end of this part of the discussion, it is necessary to briefly address the issue of road operators' performance of their duties in terms of road traffic noise protection. If the road operator identifies that the noise level generated by the operation of the road exceeds the standards, then it should, *ex officio*, take measures to reduce this level to at least the acceptable level (e.g. by building appropriate noise barriers, replacing the road surface, changing traffic organisation, etc.). The practice of taking these actions only as a result of a civil court judgment or a decision pursuant to Article 362 EPL is incorrect.

6. Protection against road traffic noise in the context of road traffic regulations

Ensuring an appropriate acoustic climate is also facilitated by complying with road traffic regulations relating to noise generated by vehicles. Pursuant to Article 60 (2) (2) RTL,[40] it is forbidden for the driver to use the vehicle in a way that causes nuisance related to excessive noise. This regulation is detailed in the context of the carriage of cargo in Article 61 (3) RTL, according to which cargo placed on a vehicle should be protected against causing excessive noise. Article 66 (1) (2) RTL, on the other hand, provides that a vehicle engaged in traffic is to be so constructed, equipped and maintained that its use does not disturb the public peace by causing noise exceeding the level laid down in specific regulations.[41] It may be thought that since this provision refers to "public peace", it does not directly refer to ensuring normative noise levels in acoustically protected areas indicated in Article 113 (2) (1) EPL and in the Regulation of the Minister of Environment of 14 June 2007 on permissible noise levels in the environment, but to creating an appropriate acoustic climate outside the said areas (primarily on public roads).[42] The permissible levels of external noise generated by vehicles are set out in the Regulation of the Minister of Infrastructure of 31 December 2002 on the technical conditions of vehicles and

[40] Act of 20 June 1997 – Road Traffic Law (consolidated text, Journal of Laws 2023, item 1047, as amended).

[41] Vehicle equipment and devices, in particular those ensuring the safety of traffic and the protection of the environment against the adverse effects of vehicle use, shall be maintained in good condition and operate efficiently and effectively (Article 66 (2) RTL).

[42] Of course, indirectly, compliance with this regulation may affect noise levels in areas subject to acoustic protection under environmental regulations.

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the scope of their necessary equipment[43] (see § 9 (1) (1), § 45 (1) (2), and § 53 (5)), the Regulation of the Minister of Infrastructure of 2 March 2011 on technical conditions for trams and trolleybuses and the scope of their necessary equipment[44] (see § 3 (8) and § 19 (1)), and the Regulation of the Ministers of: Internal Affairs and Administration, National Defence, Finance, and Justice of 22 March 2019 on special vehicles and vehicles used for special purposes of the Police, Internal Security Agency, Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, State Protection Service, National Revenue Administration, Prison Service, and fire brigade[45] (see § 7 (1) (6) and Appendix no. 2 to the Regulation in question).

It should be mentioned that road traffic control authorities are entitled to use control and measuring instruments in order to establish a violation of environmental requirements and to prevent the use of a vehicle whose technical condition, cargo, weight or axle load violates environmental requirements (Article 129 (2) (8) (b), Article 129 (2) (9), Article 129 (4), (4a), and (4aa) RTL). A police officer, a Border Guard officer or an officer of the Customs and Revenue Service shall stop the registration certificate (temporary permit) in the event that it is found or there is a justified suspicion that the vehicle breaches environmental protection requirements (Article 132 (1) (1) (c) and (1a) (1) (c) RTL).

Eliminating excessively noisy vehicles from road traffic certainly contributes to improving the acoustic climate. However, it should be noted that noise levels in areas subject to acoustic protection depend not only on the loudness of individual vehicles on the road, but also, e.g., on the number of vehicles passing by the protected area or the condition of the road surface.

In the context in question, it should also be borne in mind that drivers are prohibited from abusing the audible signal and from using the audible signal in an urban area, unless this is necessary due to an immediate danger (Article 29 (2) (1) and (2) RTL).

7. Enforcement of rights by persons exposed to road traffic noise

When discussing the road traffic noise protection system, it is also necessary to refer briefly to the legal protection measures available to people exposed to abnormal road traffic noise.[46] Such persons may only pursue civil claims, the enforcement of which involves costly and, more importantly, lengthy judicial proceedings.

[43] Consolidated text, Journal of Laws 2016, item 2222, as amended.

[44] Journal of Laws 2011, no. 65, item 344.

[45] Journal of Laws 2019, item 594.

[46] For more details, see P. Poniatowski, *(Niewystarczające) środki ochrony prawnej przysługujące osobom narażonym na ponadnormatywny hałas drogowy*, "Transformacje Prawa Prywatnego" 2021, no. 3, pp. 61–73.

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Pursuant to Article 323 (1) EPL, anyone who is directly at risk of a damage caused by the unlawful impact on the environment or has been affected by such damage may request the entity liable for the hazard or infringement to restore the legal state of affairs and take preventive measures, in particular by installing systems or devices to protect against the threat or damage; and where this is impossible or excessively difficult, they may require the cessation of the activity giving rise to the risk or infringement. Based on that provision, one may request, e.g., that noise barriers be installed where the road traffic noise level exceeds the permissible levels.[47] Such a request may also be based on Article 24 (1) of the Civil Code, according to which the person whose personal interests are threatened by someone else's action, may demand that this action be abandoned, unless the action is not unlawful; and in the event of an infringement, the person may also require the offender to make necessary steps to remedy the consequences of the infringement. These include protection of personal goods such as health, right to a peaceful home life, right to mental peace, right to rest, right to undisturbed use of property or inviolability of home. Protection against road traffic noise can also be sought under the provisions on restitution protection in connection with the prohibition of immissions exceeding a reasonable average (Article 222 (2) in conjunction with Article 144 of the Civil Code).

Protection against noise may also be ensured through administrative proceedings. Pursuant to Article 362 (1) EPL, if an entity which uses the environment has a negative impact on the environment, the environmental protection authority may, by way of an administrative decision, impose an obligation to limit the environmental impact and environmental risk or to restore the environment to a proper state. In the decision in question, the environmental authority may specify: the scope of the limitation of the environmental impact or the state to which the environment is to be restored; the activities aimed at limiting the environmental impact or restoring the environment to a proper state; the deadline for performing the obligation (Article 362 (2) EPL). The key problem, however, is that the proceedings to issue the decision in question are initiated *ex officio* (Article 375 EPL). Therefore, a person exposed to road traffic noise has very limited influence on the "forcing", through administrative measures, of the entity responsible for ensuring appropriate acoustic climate to fulfil its obligations, as he/she can at most be a party of already initiated proceedings. It should be added, however, that in accordance with Article 82 (1c) API, if the results of the post-implementation analysis or monitoring indicate the need to take measures to adapt the project to the requirements of environmental protection, the proceedings referred to in Article 362 EPL are initiated; the pro-

[47] W. Kotowski, B. Kurzępa, Ł. Kot, *Drogi publiczne. Budowa, utrzymanie, finansowanie*, Warszawa 2014, p. 155.

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ceedings are also initiated at the request of the authority which issued the decision on environmental conditions or the regional director for environmental protection.

One can mention as a side note (as it is difficult to speak here about measures of seeking protection against noise) the possible criminal liability for failure to undertake actions aimed at protection against road traffic noise.[48] However, it should be noted that there are no provisions that directly address the issue. Moreover, conviction of the offender for one or another offence will not result in the person concerned having a noise barrier built or any other solution to their problem.

8. Environmental protection authorities

The environmental protection authorities competent in matters of protection from road traffic noise are: the district head (or president of a city having district rights – see Article 3 (35) EPL), who is competent in matters referred to in Article 178 and Article 362 (1) to (3) EPL (Article 378 (1) EPL), and the marshal of the voivodeship, who is competent in cases which can always have a significant impact on the environment within the meaning of the API, as well as in cases referred to in Article 362 (1) to (3) EPL regarding roads other than motorways and expressways situated in cities having district rights (Article 378 (2a) (2) and (4) EPL). Moreover, the authorities of the Inspectorate of Environmental Protection acting under the provisions of the Act on the Inspectorate of Environmental Protection perform tasks in the field of environmental protection, if the EPL so provides (Article 377 EPL). The role of the Chief Inspector of Environmental Protection in the context of running the state environmental monitoring is described above.

CONCLUSIONS

Road traffic noise is a pollution which should be reduced at least to make it not harmful to the health and well-being of persons exposed to it. The legislation on combating such type of noise is comprehensive and at first glance appears to provide adequate protection against it. As noted in the foregoing discussion, protection against noise must be taken into account already at the stage of road design, and even before, at the stage of their planning, since information from, i.a., strategic noise maps used in the conduct of state environmental monitoring and the preparation of programmes of environment protection against noise can already

[48] For more details, see P. Poniatowski, *Odpowiedzialność karna za niepodjęcie działań zmierzających do ochrony przed ponadnormatywnym hałasem drogowym*, "Prokuratura i Prawo" 2020, no. 10–11, pp. 121–131.

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be used. In an ideal situation, i.e. where at each stage of a road project all entities perform their duties properly, people should be protected against harmful noise.

However, the devil is in the details, as always. First, the very starting point is incorrect. The permissible noise levels in the environment are so high that even "taming" the road traffic noise in acoustically protected areas to make it compliant with the standards does not meet the purpose of this protection, namely the care of human health and the possibility of normal use of their place of residence (rest, opening windows, using the garden, etc.). These levels are, taking into account human perception of noise, much higher than the recommendations of the World Health Organization.[49] Secondly, according to my observations based on media reports, especially articles on the Internet,[50] I can say that often, even when noise standards are found to be violated, no measures are taken to counteract it. Worse still, people exposed to harmful noise do not have the appropriate means of enforcing the applicable law. The perspective of a years-long lawsuit may seem daunting for someone who has to endure day after day the hardships of living near a noisy road, and may even discourage them from using any available means. It seems, therefore, that in addition to the reduction of the permissible noise levels in the environment,[51] the system of enforcing the regulations providing for the obligation to ensure protection against noise should also be remodelled.[52] Due to the fact that public administration bodies are obliged to proceed with the case thoroughly and quickly, using the simplest possible means leading to its settlement, therefore case should be dealt with without undue delay, the right way of "enforcing" the implementation of road traffic noise protection obligations is the administrative one. Those exposed to noise should, however, have the option to request initiation of the proceedings. Cases of this type should be resolved as soon as possible, because a person exposed to harmful noise cannot wait. They live with their problem and cannot forget it. It is impossible to function normally in noise.

[49] See idem, *The Legal Basis…*, pp. 141–144; idem, *Dopuszczalne poziomy hałasu drogowego – kilka uwag o pozornej ochronie akustycznej*, "Palestra" 2022, no. 6, pp. 77–83.

[50] These are usually about situations where desperate residents in areas adjacent to a noisy road seek the media's help in reaching a broader public to present their suffering. Suffice it to enter the Polish phrase *walczą o ekrany* (they strive for noise barriers) in an internet search engine to see how large the scale of the problem is.

[51] See P. Poniatowski, *The Legal Basis…*, p. 146; idem, *Dopuszczalne poziomy hałasu…*, pp. 82–85.

[52] See more idem, *(Niewystarczające) środki…*, pp. 77–79.

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Police, Internal Security Agency, Intelligence Agency, Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, State Protection Service, National Revenue Administration, Prison Service, and fire brigade (Journal of Laws 2019, item 594).

Case law

Judgment of the Supreme Administrative Court of 27 March 2012, II OSK 208/12, LEX no. 1251906.
Judgment of the Supreme Administrative Court of 1 October 2013, II OSK 1032/12, LEX no. 1559260.
Judgment of the Supreme Administrative Court of 16 April 2019, II OSK 25/19, LEX no. 2678803.
Judgment of the Supreme Administrative Court of 29 October 2019, II OSK 2090/19, LEX no. 2750459.
Judgment of the Voivodeship Administrative Court in Szczecin of 28 February 2019, II SA/Sz 1253/18, LEX no. 2639357
Judgment of the Voivodeship Administrative Court in Warsaw of 8 May 2019, VII SA/Wa 56/19, LEX no. 2693335.

ABSTRAKT

W artykule omówiono regulacje, na podstawie których gromadzi się informacje o stanie środowiska, które mogą być wykorzystywane na etapie planowania, projektowania, budowania i eksploatacji dróg (państwowy monitoring środowiska, programy ochrony środowiska przed hałasem, strategiczne mapy hałasu). Odniesiono się również do kwestii ochrony przed hałasem drogowym na etapie projektowania, budowy i przebudowy dróg, a także na etapie ich eksploatacji. Wskazano też organy ochrony środowiska, które pełnią ważną rolę w kontekście nadzorowania przestrzegania przepisów dotyczących ochrony przed hałasem oraz omówiono krótko środki ochrony prawnej przysługujące osobom narażonym na ponadnormatywny hałas drogowy.

Słowa kluczowe: hałas drogowy; ochrona przed hałasem drogowym; prawne podstawy ochrony przed hałasem; inwestycja drogowa