

# THE SOUND OF SILENCE, (UN)ACHIEVABLE? – UNDER WHAT CONDITIONS COULD AN AIRPORT OPERATOR BE HELD LIABLE FOR NOISE POLLUTION?

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## Abstract

This paper aims to determine under what conditions an airport operator could be held liable for noise pollution. The author reviews the general notions of noise pollution and airport liability and discusses how these two elements interconnect using case-law examples from the US, Germany and Poland. The main conclusion of these deliberations is that airport liability for noise pollution is not only dependent on domestic law but also the country's attitude towards the issue at hand, including how it perceives the values of economic development of air transport and human well-being.

Keywords: air law, liability of the airport operator, noise pollution, environmental law.

## DŹWIĘK CISZY, (NIE)OSIĄGALNY? – NA JAKICH WARUNKACH OPERATOR LOTNISKA MOŻE ZOSTAĆ POCIĄGNIĘTY DO ODPOWIEDZIALNOŚCI CYWILNEJ ZA ZANIECZYSZCZENIE HAŁASEM?

### Streszczenie

Celem artykułu jest ustalenie, na jakich warunkach operator lotniska może zostać pociągnięty do odpowiedzialności cywilnej za zanieczyszczenie hałasem. Autorka omawia ogólne pojęcia zanieczyszczenia hałasem oraz odpowiedzialności operatora lotniska oraz bada jak te dwa zjawiska wzajemnie na siebie oddziałują, posługując się orzecznictwem ze Stanów Zjednoczonych, Niemiec oraz Polski. Głównym wnioskiem rozważań jest obserwacja, iż odpowiedzialność operatora lotniska za zanieczyszczenie dźwiękiem zależy nie tylko od prawa krajowego, ale

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także od indywidualnego podejścia danego kraju, do m.in. rozwoju ekonomicznego transportu lotniczego oraz dobrostanu człowieka.

Słowa kluczowe: prawo lotnicze, odpowiedzialność operatora lotniska, zanieczyszczenie hałasem, prawo ochrony środowiska

## 1. INTRODUCTION

According to the estimates conducted in six Western European countries<sup>1</sup> in 2009–2010,<sup>2</sup> traffic noise, including air traffic noise, had the second biggest and growing<sup>3</sup> impact on public health in the region among researched environmental causes.<sup>4</sup> Long-term and excessive exposure to aircraft noise can potentially lead to sleep disturbance and annoyance, as well as negatively affect the metabolic system and cognition skills in children (i.a. reading and oral comprehension).<sup>5</sup>

On the other hand, aviation is set to expand further and further. The forecast of the European Organisation for the Safety of Air Navigation (EUROCONTROL) shows that (in the case of the base scenario) European air transport, based on the number of flights, is expected to return to its pre-pandemic state in 2025. From then on, it should grow steadily at 1.5% per year and eventually reach 11.8 million flights in 2029.<sup>6</sup>

Putting these two antagonising phenomena together creates questions as to how to find a compromise between further development of air transport and human well-being and health. Such is especially crucial for those living close to the airports and under flight paths. This balancing exercise has been done by courts around the world for the past decades, also in cases in which the airport operator was being sued against – a rather less obvious choice than e.g. aircraft operator.

This paper aims to determine under what conditions an airport operator could be held liable for noise pollution. To achieve that, the general notions of noise pollution and airport liability will be discussed, to finally review cases of airport liability

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<sup>1</sup> As part of the multinational Environmental Burden of Disease in Europe (EBoDE) project - Belgium, Finland, France, Germany, Italy and the Netherlands.

<sup>2</sup> Later research on this matter in the region is scarce, as proven by the fact that the European Environment Agency (EEA) relied on this data in its 2014 and 2020 reports on noise in Europe – see, EEA, *Report No 10/2014 – Noise in Europe 2014*, Luxembourg 2014; EEA, *Report No 22/2019 – Environmental Noise in Europe 2020* Luxembourg 2020.

<sup>3</sup> World Health Organization (WHO) Regional Office for Europe, *Burden of disease from environmental noise - Quantification of healthy life years lost in Europe*, Copenhagen 2011, p. 1.

<sup>4</sup> Other researched factors were i.a. particulate air pollution (most impactful), second-hand smoke (same results as traffic noise), and radon (third most impactful) – O. Hänninen, et al., *Environmental burden of disease in Europe: assessing nine risk factors in six countries*, “Environmental Health Perspectives” 2014, no. 122(5), pp. 439–446.

<sup>5</sup> WHO Regional Office for Europe, *Environmental Noise Guidelines for the European Region*, Copenhagen 2018, pp. 61–76.

<sup>6</sup> EUROCONTROL, *Forecast Update 2023–2029*, 18 October 2023 <<https://www.eurocontrol.int/sites/default/files/2023-03/eurocontrol-seven-year-forecast-2023-2029-spring-2023.pdf>> accessed 31 January 2024.

for noise pollution in three chosen jurisdictions – the United States (US), Germany and Poland. Each of them shows that this matter is not only dependent on domestic law but also the country's attitude towards the issue at hand, including how it perceives the earlier-mentioned values.

## 2. AIRPORT-RELATED NOISE POLLUTION – DEFINITION OF THE NOTION AND LEGAL CONSIDERATIONS

The notion of 'noise pollution' concerns any sounds that are unwanted or excessive and have negative effects on human health and wildlife. One of its subcategories, environmental noise, relates directly to noise created by human activities, including transportation and thus, airport activities.<sup>7</sup>

Noise as an airport-related problem has been addressed for the first time in the 1968 Resolution A16-3 adopted by the Assembly of the International Civil Aviation Organization (ICAO). It indicated a need to convene a special meeting dedicated to this matter, which did, indeed, happen a year later. The recommendations concluded during it became the draft material for the set of Standards and Recommended Practices (SARPs)<sup>8</sup> on environmental protection and what finally came to be Volume I of Annex 16 on Aircraft Noise.<sup>9</sup>

In 2001, the concept of a 'balanced approach' to noise management was introduced through the ICAO Assembly Resolution A33-7. It begins with the identification of the noise problem at the specific airport and then is followed by a four-element analysis aiming to reduce noise. It specifically allows more flexibility through airport-by-airport basis and the use of existing agreements and laws.<sup>10</sup> The elements taken into consideration are:

“reduction at source, land-use planning and management, noise abatement operational procedures and operating restrictions, with the goal of addressing the noise problem in the most cost-effective manner.”<sup>11</sup>

This approach has been implemented at the European Union's (EU) level through Regulation No 598/2014,<sup>12</sup> while the assessment of the noise situation at

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<sup>7</sup> UN Environment Programme, *Noise Pollution*, <<https://leap.unep.org/en/knowledge/glossary/noise-pollution>> accessed 31 January 2024.

<sup>8</sup> Understood in line with Chapter VI of the Chicago Convention – Convention on International Civil Aviation, adopted 7 December 1944, entered into force 4 April 1947, 15 UNTS 295.

<sup>9</sup> ICAO, *Annex 16 – Environmental Protection*, Vol. I *Aircraft Noise* (8<sup>th</sup> ed.), Montreal July 2017, p. xii.

<sup>10</sup> P. Mendes de Leon, *Introduction to Air Law* (11<sup>th</sup> ed.), Alphen aan den Rijn 2022, p. 172.

<sup>11</sup> ICAO Assembly (33<sup>rd</sup>), *Resolution A33-7 Consolidated statement of continuing ICAO policies and practices related to environmental protection*, Appendix C. For more details on each of the elements – ICAO, *Guidance on the Balanced Approach to Aircraft Noise Management* (2<sup>nd</sup> ed.), Doc 9829, 2008.

<sup>12</sup> Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC (OJ L 173, 12.6.2014).

the airports is done following Directive 2002/49/EC.<sup>13</sup> The US, however, treats the approach as 'additional guidance material' to be used at international airports with a perceived noise problem.<sup>14</sup> Nevertheless, several regulations regarding noise have been adopted on the federal level.<sup>15</sup>

Despite being an important agenda item for ICAO, interestingly, this matter is not part of any of the international treaties relating to liability – not for the lack of trying. Inclusion, or non-recoverability, of the damage caused by noise and sonic booms to third parties, was considered at the occasion of the 1952 Rome Convention<sup>16</sup> amendment – the 1978 Montreal Protocol<sup>17,18</sup>. Nevertheless, the Conference decided against it, as the matter was thought not to be researched enough to make it to the final draft.<sup>19</sup> Thus, this matter was left at the discretion of national law and internationally, it is still unresolved.<sup>20</sup>

In practice, aviation-related noise is also usually not covered by the standard aerospace insurance policy in the London market. Claims related directly or indirectly to damage due to "noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith" are very often excluded – a clause commonly known as AVN46B.<sup>21</sup> The author supposes that it has to do with the nature of the aviation industry and also the fact that noise is inherent to air operations. If needed, however, it is possible upon a premium to effect specific coverage against damage caused by noise or associated phenomena (AVN47).<sup>22</sup>

Noise pollution remains to be a very much discussed topic. In the context of aviation, some aspects of it are regulated both on the international level and domestically. The ICAO's 'balanced approach' is a commonly used guidance in combatting this problem. Nevertheless, some legal issues related to it, such as liability, have not been answered in a treaty, and it seems that any changes to this situation are unlikely to happen due to the already existing national solutions.

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<sup>13</sup> 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, 18.7.2002).

<sup>14</sup> FAA, *Guidance on the Balanced Approach to Noise Management*, Advisory Circular 150/5020-2, 28 September 2004.

<sup>15</sup> Aviation Safety and Noise Abatement Act of 1979 (P.L. 96-193, 94 Stat. 50, 18 February 1980); National Environmental Policy Act of 1969 (Pub. L. 91-190, 1 January 1970, 83 Stat. 852).

<sup>16</sup> Convention on damage caused by foreign aircraft to third parties on the surface, adopted 7 October 1952, entered into force 4 February 1958, 310 UNTS 181.

<sup>17</sup> Protocol to amend the Convention on damage caused by foreign aircraft to third parties on the surface, adopted 23 September 1978, entered into force 25 July 2002, 2195 UNTS 370.

<sup>18</sup> A.J. Mauritz, *Liability for surface damage inflicted by international civil aviation*, Maastricht 2003, p. 70.

<sup>19</sup> P. Mendes de Leon, *Liability of Airports for Noise Hindrance: A Comparative Analysis*, "The Korean Journal of Air & Space Law and Policy" 1999, no. 11, p. 173.

<sup>20</sup> P. Mendes de Leon, *Introduction...*, *op. cit.*, p. 469.

<sup>21</sup> K. Posner, T. Marland, P. Chrystal, *Margo on Aviation Insurance* (4<sup>th</sup> ed.), London 2014, para. 13.04.

<sup>22</sup> *Ibidem*, para. 13.07.

### 3. AIRPORT OPERATOR – STATUS AND SUBJECT OF LIABILITY

Moving to the second piece of the puzzle – aerodromes, in general, are defined in Annex 14 as:

“[a] defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft”.<sup>23</sup>

Details on planning thereof, including economic and environmental impact, are contained in the Airport Planning Manual.<sup>24</sup> For the clarity of this paper, the author uses the notion of ‘airport’ for airports offering scheduled passenger airline service, with an assigned International Air Transport Association (IATA) code.<sup>25</sup>

Similarly to the matter of liability for noise pollution, it is the national law that determines the status of airports and whether they could be subject to liability.<sup>26</sup> It should be noted that the 1929 Warsaw Convention<sup>27</sup> and the 1999 Montreal Convention<sup>28</sup> do not cover the liability of airport operators *per se*, except for when they are seen as the agent of the air carrier.<sup>29</sup> Nevertheless, under the topic of this paper, this will have little influence over the deliberations as noise pollution is related to third parties, rather than to situations of contractual arrangements.

What is more, this matter might also be viewed through the progressing process of airport privatisation. Since 1987, more and more airports have become privately owned or partially private.<sup>30</sup> As the author chose the cases of Poland, Germany and the US, this interplay between ownership and liability will be looked upon from the perspective of their geographical areas.

In Europe, around 41% of all airports have mixed ownership or are fully private, according to a 2016 report,<sup>31</sup> i.a. London Heathrow Airport (LHR). Nevertheless, in the case of the EU and according to the case-law of the Court of Justice of the European Union (CJEU), airports are seen as ‘undertakings’ and their operations are

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<sup>23</sup> ICAO, *Annex 14 - Aerodromes*, Vol. I *Aerodrome Design and Operations* (9<sup>th</sup> ed.), Montreal July 2022, para. 1.1.

<sup>24</sup> ICAO, *Airport Planning Manual* (2<sup>nd</sup> ed.), Doc 9184, 1987.

<sup>25</sup> The author uses the similar understanding as the one of du Perron – A.E. du Perron, *Liability of Air Traffic Central Agencies and Airport Operators in Civil Law Jurisdiction*, “Air and Space Law” 1985, no. X (4/5), p. 210.

<sup>26</sup> P. Mendes de Leon, *Introduction...*, *op. cit.*, p. 478.

<sup>27</sup> Convention for the Unification of certain Rules relating to International Carriage by Air, adopted 12 October 1929, entered into force 13 February 1933, 137 LNTS 11.

<sup>28</sup> Convention for the Unification of Certain Rules for International Carriage by Air, adopted 28 May 1999, entered into force 4 November 2003, 2242 UNTS 309.

<sup>29</sup> M.J. Holland, *Applying the Montreal Convention to Airport Terminal Operators: The Sword and the Shield*, “Air and Space Law” 2012, no. 37(6); G. Guerrerri, *The Airport Operator: Aircarrier’s Agent of Independent Contractor?*, “Air and Space Law” 1992, no. XVII (4/5).

<sup>30</sup> A. Graham, *Airport privatisation: A successful journey?*, “Journal of Air Transport Management” 2020, no. 89, p. 101930.

<sup>31</sup> Airport Council International (ACI) Europe, *The Ownership of Europe’s Airports*, Brussels 2016, p. 3.

‘economic activity’, regardless of whether or not they are private or public entities or of their profitability.<sup>32</sup> Thus, they might be subject to liability.

In the US, however, only the Branson Airport (BKG) in Missouri is privately owned. The rest of them are owned and operated by local authorities, e.g. Los Angeles Airport (LAX) owned by the City of Los Angeles, or state governments, i.a. Anchorage International Airport (ANC) owned and operated by the State of Alaska. As their activities are related to public funds, hence also possible payment of damages, owners/operators may be subject to sovereign immunity from tort liability.<sup>33</sup>

Historically, however, immunity very often did not apply to municipality airports due to their proprietary function.<sup>34</sup> What is more, in 1946 Congress passed the Federal Tort Claims Act that waives such immunity for certain torts and allows holding the state liable in the same manner and extent as a private individual<sup>35</sup>. The waiver, yet, is not absolute and airports sometimes have tried to rely on the ‘discretionary function’ exception – with varying degrees of success.<sup>36</sup>

To conclude, airport liability is a very complex issue, dependant purely on national law – which will be elaborated on in particular noise pollution cases. The fact that the airport was privatised or remains under the rule of the state, would not influence the situation in the national cases that the author is planning to discuss. As noticed above, in the EU, all airports are undertaking subject to possible liability and rarely any airports in the US are private.

#### 4. LIABILITY OF THE AIRPORT OPERATOR FOR NOISE POLLUTION – OVERVIEW OF SELECTED CASE-LAW AND REGULATIONS

The two abovementioned elements, noise pollution and airport liability, come together in the 1962 US Supreme Court decision in the *Griggs v. Allegheny County* case, which essentially found that airport owner-operator in the US could be financially liable for excessive aircraft noise.<sup>37</sup> Nevertheless, it should be already mentioned that this avenue is not as common as choosing to sue an aircraft operator, as a direct source of noise.<sup>38</sup>

As a purely domestic matter, the cause for airport liability for noise pollution might differ from country to country. Yet, it will usually fit within these or equivalent categories, often simultaneously:

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<sup>32</sup> Judgment of the Court (Sixth Chamber) of 24 October 2002 in C-82/01 P, *Aéroports de Paris v Commission of the European Communities* (ECLI:EU:C:2002:617), para. 75; Judgment of the Court (Eighth Chamber) of 19 December 2012 in C288/11 P, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v European Commission* (ECLI:EU:C:2012:821), para. 50.

<sup>33</sup> P. Mendes de Leon, *Introduction...*, *op. cit.*, p. 478.

<sup>34</sup> *Owen v. City of Independence* (1980), 445 U.S. 622; *Wendler v. City of Great Bend* (1957), 316 P.2d 265, 270 (Kan.).

<sup>35</sup> 28 U.S. Code Ch. 171.

<sup>36</sup> J.L. Cresswell, *Applying the Discretionary Function Exception to the Waiver of Sovereign Immunity in Airport Litigation* “Journal of Air Law and Commerce” 2014, no. 79.

<sup>37</sup> *Griggs v. County of Allegheny* (1962), 369 U.S. 84, 89.

<sup>38</sup> P. Mendes de Leon, *Introduction...*, *op. cit.*, pp. 171–176.

- in the case of ‘nuisance’ – a concept appearing in most jurisdictions, could be understood as

“[a]n activity or state of affairs that interferes with the use or enjoyment of land or rights over land (private nuisance) or with the health, safety, or comfort of the public at large (public nuisance).”<sup>39</sup>

- as ‘inverse condemnation’, in cases of ‘unconstitutional taking’ – in the US, related to the Fifth Amendment of the US Constitution, is a

“remedy for property owners when a government takes or damages a property for public use without having brought an eminent domain proceeding.”<sup>40</sup>

In other countries, it could be related to the reduction of property’s market value.

- in case of ‘trespass’ – e.g. when an aircraft strays from its established flight path, flying over someone’s property, causing noise, i.e. not substantial enough to be seen as inverse condemnation.<sup>41</sup>

To provide more detail to this simplified overview, a look at the chosen countries, their case-law and related regulations, is needed. The author decided to analyse the case-law of the US, Poland and Germany due to the availability of decisions, linguistic considerations, and their overall representativeness, as compared to other jurisdictions with potentially similar approaches.

#### 4.1. UNITED STATES

The US has ample case-law regarding this issue and is an example of a country where there is a lot of guidance on how to achieve a satisfactory result with claiming compensation. In the 1946 *United States v. Causby* case, the US Supreme Court decided that low and frequent flights over private land could be a “direct and immediate interference with the enjoyment and use of the land”<sup>42</sup>, which became an opening for claiming damages under the notion of inverse condemnation. This exact solution was utilised in the earlier mentioned *Griggs* case that allowed airport operators to be held liable for noise pollution, which led to a wave of similar decisions<sup>43</sup> and became a traditional means of addressing this issue.<sup>44</sup>

Moreover, many interesting cases have been discussed in conjunction with the operation of LAX, such as the *Aaron v. City of Los Angeles*. The court found that an airport operator could be held liable for the reduction of property market value that resulted from the operation of the airport when

“the noise from aircraft using the airport causes a substantial interference with the use and enjoyment of the property, and the interference is sufficiently direct and suf-

<sup>39</sup> J. Law, E.A. Martin, *A Dictionary of Law* (9th ed.), Oxford 2018, “nuisance”.

<sup>40</sup> Wex Legal Dictionary and Encyclopedia, ‘inverse condemnation’, <[https://www.law.cornell.edu/wex/inverse\\_condemnation](https://www.law.cornell.edu/wex/inverse_condemnation)> accessed 31 January 2024.

<sup>41</sup> R.L. Bennett, *Airport Noise Litigation: Case Law Review*, “Journal of Air Law and Commerce” 1982, no. 47, p. 479.

<sup>42</sup> *United States v. Causby* (1946), 328 U.S. 256, 267.

<sup>43</sup> *State of Illinois v. Butterfield* (1975), 396 F. Supp. 632.

<sup>44</sup> K. L. Falzone, *Airport Noise Pollution: Is There a Solution in Sight?*, “Boston College Environmental Affairs Law Review” 1999, no. 26, p. 777.

ficiently peculiar that the owner, if uncompensated, would pay more than his proper share to the public undertaking.”<sup>45</sup>

The case of *Greater Westchester Homeowners Association v. City of Los Angeles*, heard by the California Supreme Court, allowed for claiming compensation for nuisance related to “noise, smoke, and vibrations emanating from aircraft”, that lead to emotional and mental distress of the homeowners.<sup>46</sup>

#### 4.2. GERMANY

A slightly different attitude has been showcased by the courts and the regulators in Germany, according to which aircraft noise has to be tolerated by the public.

The matter of aircraft noise protection, in line with § 29b of *Luftverkehrsgesetz* (German Aviation Law Act, LuftVG)<sup>47</sup> obliging authorities to protect the population from unacceptable aircraft noise, was regulated by the Air Traffic Noise Act.<sup>48</sup> The Act allows for the establishment of zones with building restrictions in the vicinity of the airports and sets requirements for residential building insulation in such zones (as will be mentioned later – a similar solution is used in the Polish legal system).

Nevertheless, the number of legal proceedings regarding aviation-related noise does not exceed the number of cases concerning road traffic noise.<sup>49</sup> Under § 1(1) of LuftVG, the airspace is free to use and civil claims in the issue at hand are limited. Notably, § 905, § 906(1) and § 1004(2) of *Bürgerliches Gesetzbuch* (German Civil Code, BGB)<sup>50</sup> oblige the owners of the land to tolerate the situation.<sup>51</sup> This, however, only relates to air traffic that is legal and approved, which constitutes an opening for possible liability in cases of improperly conducted loud air operations.

Yet, in practice, it is quite hard to prove such and to demonstrate the causal infliction of damage related to noise.<sup>52</sup> If claims against airlines are generally unsuccessful, it should be then taken into account that airports are also only an indirect source of pollution<sup>53</sup> – this complicates the potential claim even further, making it even more unlikely to be satisfactory.

#### 4.3. POLAND

Finally, Poland is a particularly interesting example when it comes to airport liability for noise pollution and changing views thereon.

<sup>45</sup> *Aaron v. City of Los Angeles* (1974), 40 Cal.App.3d 471, p. 484.

<sup>46</sup> *Greater Westchester Homeowners Ass'n v. City of Los Angeles* (1979), 603 P.2d 1329.

<sup>47</sup> Aviation Act (*Luftverkehrsgesetz*) as published on 10 May 2007 (Federal Law Gazette I, p. 698), as last amended by Article 1 of the Act of 10 July 2020 (Federal Law Gazette I, p. 1655).

<sup>48</sup> *Gesetz zum Schutz gegen Fluglärm* in the version promulgated on 31 October 2007 (Federal Law Gazette I p. 2550).

<sup>49</sup> P. Wysk, *Ausgewählte Probleme zum Rechtsschutz gegen Fluglärm*, „Zeitschrift für Luft- und Weltraumrecht“ 1998, no. 47, p. 19.

<sup>50</sup> Civil Code (*Bürgerliches Gesetzbuch*) in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515).

<sup>51</sup> Wysk, *Ausgewählte Probleme...*, *op. cit.*, p. 19.

<sup>52</sup> *Ibidem*, p. 20.

<sup>53</sup> Mendes de Leon, *Introduction...*, *op. cit.*, p. 476.



According to Article 129(2) of Polish Environmental Protection Law,<sup>54</sup> if the use of the property is restricted by reasons of environmental protection, the owner has the right to demand compensation, i.a. for the decrease in the property's market value. Furthermore, if, despite available technological solutions, the levels of environmental quality standards for airports, cannot be met, the county creates a Restricted Use Zone – it establishes its boundaries, and restrictions in terms of zoning and technical requirements of buildings.<sup>55</sup>

Up until 2022, the decisions awarding compensation for noise pollution to airport-adjacent property owners have been frequent and dominant, as compared to those when compensation was not granted. It was decided on multiple occasions that just the establishment of the airport-related Restricted Use Zone is already sufficient proof of a decrease in property value. The fact that a Zone was created, was equated to introducing restrictions in the ways of using the property – i.a. having to put up with noise that was allowed in the Zone. In line with this reasoning, the owner would always be entitled to compensation.<sup>56</sup>

This broad interpretation has been consistently contested by scholars<sup>57</sup> and on rare occasions, also mentioned in judgements. This, however, changed in April 2022 when the Supreme Court, answering the question of the court of appeal, provided that the fact that the Restricted Use Zone was created could not be used by itself to claim damage concerning property value decrease.<sup>58</sup> To receive compensation, a specific injunction must have been imposed, such as a prohibition of building new residential construction.<sup>59</sup> Already named a revolutionary resolution,<sup>60</sup> it constitutes a critical evaluation of earlier decisions and possibly, also a spark for the amendment of the Polish Aviation Law regarding liability grounds, more favourable toward airport operators.<sup>61</sup>

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<sup>54</sup> Act of 27 April 2001 – Environmental Protection Law (*Prawo ochrony środowiska*), as amended (Journal of Laws of 2001, No. 62, item 627).

<sup>55</sup> *Ibidem*, Articles 135(1) and 135(3a).

<sup>56</sup> Judgement of the Supreme Court of 25 February 2009, file II CSK 546/08; judgement of the Supreme Court of 21 August 2013, file II CSK 578/12; judgement of the Supreme Court of 16 December 2016, file II CSK 151/16.

<sup>57</sup> E. Klat-Górska, A. Ostapski, *Odszkodowanie z tytułu ograniczenia korzystania z nieruchomości położonej w obszarze ograniczonego użytkowania. Glosa do wyroku Sądu Najwyższego z 11.03.2020 r., I CSK 688/181*, „Przebieg Sądowy” 2021, no. 9; J. Pokrzywniak, *Odpowiedzialność zarządzającego lotniskiem za szkody wynikające z ustanowienia obszaru ograniczonego użytkowania. Glosa do wyroku SN z dnia 6 czerwca 2019 r., II CSK 222/18*, „Glosa. Prawo Gospodarcze w Orzeczeniach i Komentarzach” 2021, no. 1.

<sup>58</sup> Resolution of the Supreme Court of 7 April 2022, file III CZP 80/22, previously III CZP 76/21, p. 6.

<sup>59</sup> *Ibidem*, p. 7.

<sup>60</sup> M. Habdas, *Prof. Habdas: SN porządkuje orzecznictwo w sprawie hałasu przy lotniskach*, „Prawo.pl”, 12 April 2022, <[https://www.prawo.pl/samorzad/halas-przy-lotniskach-wazna-uchwala-sadu-najwyzszego,514578.html#\\_ftn3](https://www.prawo.pl/samorzad/halas-przy-lotniskach-wazna-uchwala-sadu-najwyzszego,514578.html#_ftn3)> accessed 31 January 2024.

<sup>61</sup> M. Sosnowska, *Uciążliwe sąsiedztwo lotniska? Ma być trudniej o odszkodowanie*, „Dziennik Gazeta Prawna”, 28 July 2022, <<https://www.gazetaprawna.pl/firma-i-prawo/artykuly/8500035,lotnisko-odszkodowanie-dla-wlasciciela-nieruchomosci.html>> accessed 31 January 2024.

The three abovementioned examples were chosen to show that as much it is a domestic law matter, it is also very often influenced by the country's attitude towards the problem of noise itself, protection of citizens and development of the air transport sector<sup>62</sup> – very often also a dynamic notion.

## 5. CONCLUSIONS

The attempt to capture all the elements of the matrix in question, i.e. separately noise pollution and airport liability, then together airport liability for noise pollution, shows that as much as it is possible to claim compensation from an airport operator, it could be a very complex matter.

As for noise pollution, this problem has been increasingly fought against, on every possible level. The fact that there are specific thresholds under which it could be deemed harmful to human well-being certainly helps in determining whether there could be potential damage. Another matter is linking the excessive levels to specific health conditions, including physical and mental health. The causal relationship might be sometimes hard to establish, nevertheless, with progressing research regarding this matter, this could change in the upcoming years.

The matter of airport liability is not governed by international law, thus different jurisdictions might produce different outcomes. Having a good knowledge of the airport structure and domestic law is advisable. Notably, relying on the fact that CJEU decided that an airport could be seen as an 'undertaking', thus possibly subject to liability, is not as helpful as one might think. As proven by the examples of Germany and Poland in noise pollution cases, it does depend on the regulator's intent and the interpretation by the courts.

Finally, airport liability cases for noise pollution will be mostly related to the notions of nuisance, decrease in property value, and sometimes also trespass. Certainly, established legal practices could lead to potentially satisfactory outcomes, yet, as shown in the case of Poland, changing the well-rooted line of case-law is also possible.

The above considerations could constitute a set of conditions, or rather guidance, under which an airport operator could be held liable – by no means is that a ready-made recipe. This matter is, in the author's opinion, a unique one as it concerns a balancing exercise between how much value human health has and how important further expansion of air transport is.

This is especially important when considering new (or rather reused) concepts for aviation's future, such as supersonic travel. Although not mentioned in this paper, this matter is also interesting from the point of view of noise pollution – especially now, when projects such as the Boom Supersonic Overture or the EU-supported SENECA are being announced, and the European Union Aviation Safety

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<sup>62</sup> From the broader European perspective, European Court of Human Rights (ECHR) has interesting case-law regarding balancing these values – *Hatton and Others v. the United Kingdom* (2003), App No 36022/97; *Powell and Rayner v. the United Kingdom* (1990), App No 9310/81.

Agency (EASA) with Federal Aviation Administration (FAA) is discussing this matter with renewed interest.<sup>63</sup>

Finally, one might wonder whether holding certain aviation stakeholders liable for noise pollution is an effective and long-term remedy for the issue. In light of the recent capacity reduction controversies at the Amsterdam Schiphol Airport, also dictated by the problem of noise, the author suggests that in the future, noise pollution mitigation needs to be approached in a holistic way. It should take into account the competing interests of all parties and possible different alternative solutions – thus, maybe in this mosaic of domestic nuances, a further systemic change is needed?

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<sup>63</sup> EASA, *European Plan for Aviation Safety (EPAS) 2023–2025 Volume I: Strategic priorities*, Cologne 2023, p. 79; FAA, *Proposed rule – Noise Certification of Supersonic Airplanes*, FAA-2020-0316-0001, 2020.

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