

Piotr Świątecki

mgr inż. budownictwa, mgr prawa
Dyrektor Biura Spraw Senatorskich Kancelarii Senatu
piotr.swiatecki@gmail.com

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Transformation of transport law in the quarter century, 1990 – 2015

Abstract: The author describes how Polish transportation law has been changing over past 25 years, during Polish transformation after 1989. The author himself took part in the activities he writes about. He described transformations of ownership structure of enterprises that 25 years ago belonged to the Public Treasury.

Keywords: Law; Transport; Changes

At the end of the previous parliamentary term, Senate Infrastructure Team, headed by Senator Stanisław Kogut, wrote an interesting publication entitled 'Polish transport: evaluation of a quarter-century 1990-2015 and priorities for the future. Responses to the survey of Senate Infrastructure Team'. This material has been made available on the Internet in electronic version at: <http://senat.gov.pl/sklad/senatorowie/zespoly/zeszyty.html>.

I want to persuade to read this publication all those who are interested in a broader, historical perspective on transformation affecting transport. Statements published in the book are the result of a survey conducted among people with the position and achievements recognized in environments associated with the most important fields of transport. In this way, the unique and objective state of Polish transport across twenty-five years after the great transformation was comprehensively described. The surveyed participants answered two questions on: Polish transport, assessment of the passing quarter-century and prospects for future development. In the book there are published posts by: Elżbieta Marciszewska, Jana Pieriegud and Adam Koszman of the Warsaw School of Economics, former deputy ministers of transport: Juliusz Engelhardt, Andrzej S. Grzelakowski, Tadeusz Szozda, heads of railway department in different periods: Krzysztof Celiński and Aleksander Janiszewski, former general director of public roads Tadeusz Suwara, former vice presidents of ULC Ryszard Jaxy Małachowski, prof. Leszek Rafalski, director of IBDiM, known in railway environments Tadeusz Bronowski, Krzysztof Niemiec, long-term head of the KRBRD secretariat Andrzej Grzegorzczak, head of PPL Michała Kaczmarzyka, former head of PKS in Cieszyn Leszek Podzorski and president of PIGTS Zdzisław Szczerbaciuk.

The statements of the surveyed participants were supplemented by my synthetic, subjective sketch of the history of changes in transport law in the recent decades. The revised and updated version was used in this text. Referring to my experience in the legislation services at the Ministry of Transport, I recall observations related to the selected stages of the reconstruction of the transport in the past quarter century.

Let me remind at first some of regulations valid at the beginning of the great transformation in the eighties and nineties of the twentieth century, which came from the period of twenty years earlier. In the sixties, there were passed, the following regulation from: 2 December 1960 about railways, 27 November 1961 on road transport and national transport, 31 May 1962 on Aviation Law. In the latter case, the changes have taken several decades and only the support of the PHARE program allowed for the preparation of the new law at the turn of the twentieth and twenty-first century. (I had the honour to participate in a team led by Professor Mark Żylicz). The Aviation Law from 1962 could operate so long, because it was

the letterheads law, and its dozens of authorization to issue executive acts constituted a sufficient basis to keep the transfer the annexes to the Chicago Convention to the Polish still modified legal system.

Furthermore, the legislation from the eighties of the twentieth century had a big impact on the situation of transport in the transition period. The law included the act from 25 September 1981 regulating the system of many units of the transport sector in state-owned enterprises (there was in the mid-90s, a period in which the Minister of Transport founded over five hundred state-owned enterprises, resulting, among others, from the division of PKS and PKP as well as the executive sector of the General Directorate of Public Roads). It has also passed the act in 15 November 1984 about Transport Law and the act in 21 March 1985 on public roads, which is still in force, though it was considerably modified and amended several times.

A major component of reform of the central administration carried out by the government of Mieczyslaw Rakowski was to transform the budget of the Board of Air Traffic and Communication Airports to state-owned enterprise. The act enacted in 23 October 1987 on State Enterprise Airports, resulting from the transformation of ZRLiLK, was to allow the use of revenues generated by air traffic services for infrastructure investments (it was related mainly with the modernization of the Warsaw Okęcie). The Law on PPL is still valid in the original version, although many of its regulations are obsolete due to the evolution of the legal environment.

Highly assessed is the act on economic activity enacted one year later, on 23 December 1988 and prepared by Mieczyslaw Wilczek, the industry minister in the government of Mieczyslaw Rakowski. In this regulation, there is a directly formulated, and today evident, the revolutionary principle: what is not prohibited is allowed. Only a few areas covered by the concession represent a state, to which no law approached ever. Therefore, it is no wonder that, especially in road transport many private companies appeared.

The crisis in the economy has had a great impact on the Polish railways; help was sought in its commercialization, initially conceived as a separate from of the public administration; for this purpose aimed the act from 27 April 1989 on the state enterprise PKP (PKP worked previously on the basis of one of the chapters of the act from 2 December 1960 on railways, whereas the Minister of Communications was also the general director of railways). In the early nineties, it appointed local government - a key here was the act from 8 March 1990 on District Government (the original title: Local Government; changing the title proved to be necessary as from 1 January 1999, two more types of local government, county and provincial were introduced).

An important event in the sector subordinate to the minister of transport and supervised by him was providing legal entities with property (perpetual usufruct of land and ownership of marks) on 5 December 1990. It was done by the act from 29 September 1990 amending the act on Land Management and Expropriation property. Enfranchisement followed by law but it required confirmation by declaratory decision of the governor. Nobody expected that the determination of the legal status of real estate and state legal persons will take decades later ...

Enfranchisement from 5 December 1990 opened the way for ownership transformation of state enterprises. The mode of this transformation was regulated by the act from 13 July 1990 on the privatization of state enterprises. There was a gap between the ministry of privatization, leading capital privatization and the founding authorities such as transport minister, authorized to carry out the direct liquidation privatization, including employees. The discrepancy concerned roads transformations. It should be emphasize that the act from 13 July 1990 did not concern specific enterprises, operating under its own laws, such as PKP, PPL and LOT Polish Airlines.

It is also worth to recall that in the early '90s the Prime Minister Tadeusz Mazowiecki decided on the distribution of the national companies of the State Car Transport, established back in 1946, for nearly 200 independent companies. The ordinance no. 20 of the President of the Council of Ministers from 9 March 1990 on the company's distribution of the state car communication issued in the act from 24 February 1989 on some conditions of national economy consolidation and on amendments to certain acts, divided the National State Automobile Communication and independent PKS companies in Warsaw, Koszalin and Olsztyn into: 167 companies of passenger and passenger-freight transport (a founding by the Minister of Transport and Maritime Economy. Moreover), 18 freight PKS (under the supervision of provincial governors and presidents of Warsaw, Łódź and Kraków), 18 supply companies, 13 repair companies two construction companies and one project office.

Somewhat later, over 270 executive factories were separated and state-owned enterprises were formed from the road administration supported by the General Director of Public Roads. Since this happened after the magical date of 5 December 1990, designated as the date of enfranchisement by the mentioned earlier act from 29 September 1990 on land management, these companies waited long time for equipment in real estate - until, when a new amending act was enacted.

It seemed at that time that the privatization will go very smoothly; e.g. in an extremely fast mode was passed regulation from 14 June 1991 on transformation of the ownership of the state enterprise Polish Airlines LOT. For the first time in the III RP, the construction of the golden share was introduced. According to the concept of the then Director of the Legal Department at the Ministry of Transport, a later Deputy Prime Minister Henryk Goryszewski, the State Treasury, represented by the Minister of Transport, had to keep 50% of the votes aimed at the entire capital in the PLL LOT SA, irrespective of the capital proportion. As we know, the definitive privatization of LOT Polish did not happen. In 10 May 2013, however, the act on the repeal of the act on the transformation of ownership of the state enterprise Polish Airlines LOT was passed, finally burying the structure of the golden share in the national air carrier, in the version from the early '90s. In 26 July 1991 the act was passed under execution international road transport.

Nota bene, the national road transport waiting for its rationing longer, because until the adoption of the law from 29 August 1997 on the national transport of passengers - adopted after the passing the new Law in 2 August 1997 on the conditions of governing international road transport). In 1991, it was also an attempt to rescue the national railway. Foundation for the separation of p.p. PKP to 76 organizational units of the technical, construction and service facilities, employing more than 70,000 employees was initiated by the act from 19 October 1991 amending the law on state enterprise Polish State Railways. In this way, autonomy was obtained by already included to PKP the Railway Rolling Stock Repair Plants, Factories Railway Construction, Railway Works Company, sleeper treatment, Railway Plant Automation, Railway Betting Service Company, etc. These units have received the status of state-owned enterprises. Much time took disputes related to the equipping new companies in the railway property. Both sides of the dispute - i.e. PKP and separate companies were lively interested in receiving productive sets of the property, and defended themselves against social asset, especially in the form of company apartments. Tenants did not want to acquire these flats either. They were persuaded to create cooperatives and to decide for the residential community buildings.

After a few years, a large part of the companies separated from PKP credited National Investment Funds, created by the Act from 30 April 1993 on National Investment Funds and their privatization.

The inclusion of PKP infrastructure did not improve the condition of the company itself. The railway was still in the worse situation than road transport, incurring costs of infrastructure maintenance.

As a possible source of savings was recognized employee rights, including once widely granted concession on ticket prices. A significant limitation of these rights resulted in the act from 20 June 1992 on powers for a reduced fare on public transport (at the beginning, the title contained also a gratuitous component: powers for free and reduced fare ...).

In the half of the nineties, there were large-scale plans to build highways. Within several days, a team of state secretary, Stanislaw Rybak has prepared a draft law on October 27, 1994 about toll motorways (... later the title was supplemented with the phrase: 'and the National Road Fund', when such financial tool was created). The act was to enable the involvement of private capital in the construction of infrastructure, introducing a system of so-called concession agreements concluded after the completion of the tender. The concession contract could include the construction and exploitation or only the exploitation of the highway. At the same time, since general rules on land development in the early nineties of the twentieth century, posed in a privileged position of the local government and limited opportunities for investment in infrastructure, the motorway act introduced them pro-investment exception. Nota bene, the act served as a model for special modes of road localization (initially only national, and then all public), railways, airports, investments, etc. for EURO 2012.

Many problems were still associated with railway. Still additional legislative tools were created. In 6 July 1995, the act on the state enterprise Polish State Railways was passed, and in 22 June 1997 - the act on rail transport imposing certain liberalizing EU recommendations. It is worth noting that the EU is consistently trying to force a change justified by the need to take even competition between railways to road transport. The directive 440/91 on the railway development of the European Community introduced the principle of financial independence of carriers, the obligation to perform services in the public service, financial separation of infrastructure board from the implementation of traffic. It was under its influence a radical change was introduced in PKP. The so-called first railway package consisted mainly of the 2001 directives devoted, among others, the liberalization of access to licensed companies to trans-European freight railway network and the unification of technical, expressed in interoperability, defined as the ability to the trans-European railway system for the safe and uninterrupted movement of trains on the territory of the Member States of the European Union and fulfilling the essential requirements.

The second railway package from 2004 deepened the liberalization of freight transport in the EU. It addressed also matters of security. The directive 2004/49/EC of the European Parliament and of the Council from 29 April 2004 on safety on the Community's railways introduced a common safety targets (CST), technical specifications for interoperability (TSI) and common safety methods (CSM). The third package was adopted in 2007. The EC regulation no 1371/2007 of the European Parliament and of the Council from 23 October 2007 concerning the rights and obligations of railway passengers is valid within the Member States directly and therefore did not require any transfer to the Polish legal system, however, in the same provisions of the regulation were left many issues to be resolved in the act.

The directive 2007/58 EC of the European Parliament and of the Council from 23 October 2007 amending the Council Directive 91/440 EEC on the development of the Community and the directive 2001/14/EC on the allocation of railway infrastructure capacity and charging for the use of railway infrastructure has to open up the market for international passenger services in the EU by, among others, the introduction of cabotage rights and modifying the rules of the public service. The directive 2007/59/EC of the European Parliament and of the Council from 23 October 2007 on the certification of train drivers

operating locomotives and trains within the railway system in the Community introduces minimum common European requirements for the profession of driver, including qualifications of health, age and documents conforming qualifications.

In the half of '90, the act from 1981 on division of state-owned enterprises and management contracts was also introduced. The revolution lies in the fact that full responsibility for the company took over the unit (manager) whereas local staff government agreed to abolish their rights. Such manager agreements were contained approximately 30 in the Ministry of transport, the majority referred to the PKS enterprises. An evidence for the effectiveness of this solution is the fact that the agreement included also the current PESA. Meanwhile, there was a significant reorganization of government. Its manifestation was among adoption of the regulation from 8 August 1996 on the Office of the Minister of Treasury. Its effect was to relieve ministers by taking over the function of founding bodies of state enterprises by provincial governors and the Minister of the Treasury. The Ministry of Transport, previously supervising more than 500 companies, remained only PKP, LOT Polish Airlines and Airports.

In January 1999, new structures appeared on the administrative map of Polish. They were districts and local provinces, called voivodships, established by regulations from 5 June 1998 on local government and voivodships government. By the way, ownership issues of roads were ordered, the act from 13 October 1998 on regulations introducing laws reforming public administration (art. 73) taking over the ex lege ownership of lands under roads to the State Treasury (national roads) and local government (local, county and voivodship roads - this division was also introduced since January 1999).

However, the structural problems were still not solved in railway transport. The change would bring the adoption of the act from 8 September 2000 on commercialization, restructuring and privatization of the Polish State Railways, obliging to separation from the parent company PKP SA at least one company managing the infrastructure (Polish Railway Lines SA) and carriers. By the way, there were many other companies equipped with railroad property. Implementation of the repeatedly amended act from 8 September 2000 is still continuing and -with the introduced corrections - it changes constantly directions. As an example, it can be mentioned the communalization of regional transport company carried out a few years ago. The company became the property of the 16 voivodships, and in 2015, the majority of the capital was taken by the government's Industrial Development Agency.

A lot has happened in road and rail transport. This is a remarkable paradox that in the meantime in such a rapidly developing field as air transport, the act from 31 May 1962 on Air Law was valid for 40 years. It was only necessary the support provided under the PHARE program by a team coordinated by prof. Mark Żylicz to introduce the act from 7 June 2002 on Aviation Law. The revolution in aviation law was forced by another, liberalization package of the European Union. The first package from December 1987 was forced by: the Council Regulation no 3975/87 on the procedure for application of competition rules in air transport, Council regulation no 3976/87 on the mode of application of article 85 paragraph 3 of the EC Treaty to exclude certain types of activities in air transport from the prohibition of practices incompatible with competition rules, Council directive 87/601 from 14 December 1987 on the fees for scheduled air services between Member States, and Council decision 87/602 from 14 December 1987 on distribution of capacity between air carriers in performing scheduled air services between Member States and on access for these carriers to regular routes within the Community.

The second package from the 1990 was the Council regulation no 2342/90 from 24 July 1990 on the fees for scheduled air services and Council regulation no 2343 from 24 July 1990 on access for air carriers to scheduled air services on routes within the Community and the division between air carriers passenger capacity on scheduled air services between

Member States. Both of these packages are no longer applicable in its original version, as it has been modified subsequent acts.

In the third liberalization package was Council regulation no 2407/92 from 23 July 1992 on licensing of air carriers and regulation no 2408/92 from 23 July 1992 on access for Community air carriers to intra-Community air routes and regulation no 2409/92 on airport charges. Financial capabilities appeared but the law limited investment opportunities. Therefore, the highway experience from 1994 were used by introducing a special mode of localization described by the act from 10 April 2003 on special rules for the preparation and realization of investment in national roads, then extended to all public roads.

It is also worth noting the adoption of similar rules later in the act on railway transport and the act from 12 February 2009 on the preparation and implementation of investments in the airports for public use. Considering the aviation transport, it should be noted that the regulations on company Airports contained in the aforementioned act from 1988 remain still outside the direct interest of the legislator. Indirectly, however, the legislator referred to the PPL by the act from 8 December 2006 on Polish Air Navigation Services Agency, releasing a large part of PPL, used by air traffic services.

In the state enterprise remained only the Warsaw Okęcie, because regional airports have been transferred to separate companies. Staying formally a state-owned company, PPL became this way a kind of holding. The answer to emerging financial shortfalls was acts aimed at stabilizing the funding of transportation, such as those adopted in 16 December 2005 on Law on Railway Fund and the financing of land transport infrastructure.

Among the search for appropriate forms of public tasks in the field of transport, it is worth noting the essentially dead act from 12 January 2007 on the road of special purposes. A strong accord ending the first decade of the new millennium was the act from 16 December 2010 on the public transport, which has been significantly amended by the act from 9 October 2015 on the metropolitan relationships.

Since May 2004 we are in the European Union, which means that our legal system has been inextricably linked with European law. Much of the transport regulations (amendments of trade regulations was a lot in the last many years) is adapting to EU requirements. This process never ends, because EU law also evolves.

Polish transport law was subjected to revolutionary change in a quarter of the century. The increasing in the number and volume of acts, result not only from the growing complexity of the matter. It contributes to the necessity of transfer to our system, European legislation. To a large extent, this is the result of a departure from the formerly existing rules for constructing the synthetic law.