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**Legislative aspects of the functioning of transit passenger railway transport on the Polish-German and Polish-Czech border**

**Abstract:** Rail transit is a qualified form of cross-border traffic. Due to the specific functional scope, they are often marginalized or completely omitted in strategic documents determining the shape of the transport policy of the country or its individual regions. However, their proper regulation in the Polish and international legal system and ensuring an attractive transport offer can significantly affect the socio-economic development of border areas. In the current legal status, two divergent approaches of the legislator to traffic regulation on transit lines can be observed. One of them contains mechanisms stimulating traffic on the routes in question, while the other quite radically limits its operation. In this publication, an attempt was made to characterize and evaluate the legal regulations concerning the functioning of transport in the subject matter.

**Keywords:** Transportation law; Railway law; Railway transport; International law; Railway; Public transport

The Republic of Poland possesses infrastructure that enables railway traffic with every neighboring country. It is important to remember that the national railway network is an element of the broader European railway system. Therefore, the role of individual countries is to create the most favorable conditions that allow for the exploitation of specific railway sections functionally, meeting the actual needs of passengers. This is why it is crucial to remove obstacles of both legal and technical nature that could lead to the disintegration of railway subsystems resulting from the necessity to cross state borders. A special type of cross-border railway infrastructure is the so-called transit railway lines, which connect one or two foreign countries via a section of the line running through Polish territory. This article attempts to characterize the legal regulations that constitute the principles of conducting cross-border traffic with transit features.

General principles of international railway transportation are, as a rule, regulated by multilateral international agreements concluded between states with the participation of the international organization that unites them. One of the most important legal acts regulating this subject matter is the Convention concerning International Carriage by Rail (COTIF) dated May 9, 1980 (consolidated text in the Journal of Laws of 2007, No. 100, item 674). On the other hand, specific principles of cross-border railway traffic at individual borders are regulated by international agreements concluded between Poland and the country or countries that, through entities established for this purpose, manage the railway infrastructure from the so-called border point, serving as an extension of the railway lines into the neighboring state, thereby ensuring the continuity of the railway network at the supranational level.

Over the years, a distinct dualism in the regulation of these principles between Poland and individual neighboring countries can be observed. This is because casuistic international agreements have been concluded concerning certain railway border crossings, regulating

traffic exclusively at a given crossing. As an example, particularly the Agreement between the People's Republic of Poland and the Czechoslovak Socialist Republic on Czechoslovak transit communication through the territory of the Polish People's Republic on the railway line section between Hrádek nad Nisou and Zittau stations signed in Prague on November 16, 1962 [9], hereinafter referred to as the Prague Convention, which forms the basis for traffic on railway line No. 346, and the Agreement between the Republic of Poland and the Czechoslovak Republic on privileged railway transit from Czechoslovakia to Czechoslovakia via Głuchołazy signed in Warsaw on November 12, 1948 (Journal of Laws of 1950, No. 15, item 134) [4], hereinafter referred to as the Głuchołazy Convention, regulating the principles of cross-border train traffic on railway lines No. 343 and 333.

The second model of regulating the principles of conducting transit traffic and the operation of cross-border railway sections involves the implementation of a holistic international agreement that generally defines the rights and obligations of railway entities conducting transport at all railway border crossings operating between Poland and the neighboring state. An example of such an act is the Agreement between the Republic of Poland and the Federal Republic of Germany on cooperation in the field of railway communication through the Polish-German state border, concluded in Berlin on November 14, 2012 [12].

A similar agreement was concluded between Poland and the Czech Republic. It is the Agreement between the Government of the Republic of Poland and the Government of the Czech Republic on railway communication across the state border signed in Prague on April 29, 2005 [11]. However, despite the conclusion of a general act regulating the principles of cross-border traffic between both countries, it was decided to maintain in force specific acts separately regulating the principles of conducting transit traffic through the Głuchołazy station and between Hrádek nad Nisou and Zittau stations. It must be acknowledged that the legislator's actions in this matter are intentional, as Article 1(2) of the general agreement between Poland and the Czech Republic includes an objective exclusion of the aforementioned railway sections, indicating that the conditions for railway transit from the Czech Republic to the Czech Republic via the territory of the Republic of Poland through the Głuchołazy station and from the Czech Republic to the Federal Republic of Germany via the territory of the Republic of Poland on the railway line section between Hrádek nad Nisou and Zittau stations are defined by separate agreements. A similar exclusion is contained in Article 2(2) of the agreement concluded between Poland and Germany, according to which the agreement does not apply to railway communication on the section between the Polish-German state border and the Polish-Czech state border of the Zittau - Hrádek nad Nisou line.

The subjective distinction of these regulations into classic border crossings and lines serving strictly transit functions might have been justified at a time when border traffic was conducted under the regulatory regime in force before the adoption of the aforementioned countries into the Schengen Agreement, i.e., with full border control of goods and persons. The practice of regulating the principles of conducting transit cross-border traffic dates back to the interwar period. One of the international agreements established to standardize these rules was the agreement concluded between the German Reich and Poland on privileged transit between Polish Upper Silesia and the rest of Poland through German Upper Silesia signed in 1922 [8]. However, unlike the currently applicable agreements, it regulated the transit movement of Polish trains in freight and passenger traffic on Reich territory. The agreement had strategic importance for Poland due to the route of the relevant railway lines through the highly urbanized areas of Upper Silesia while simultaneously interrupting the continuity of important communication corridors by the state border.

Currently, however, with border control abolished, maintaining this division is purposeless and poses a significant threat to the construction and development of cross-border

local connections. In contrast to general agreements concluded in the 21st century with the Federal Republic of Germany and the Czech Republic, regulating general principles of cross-border traffic, the Prague and Głuchołazy conventions have been functioning in the international legal system in their unchanged form since, respectively, the 1960s and 1940s. The vast legal-political-social changes that have occurred since their enactment have significantly outdated the content and spirit of the legal norms adopted during the most oppressive years of the People's Republic of Poland.

Both the Prague and Głuchołazy conventions indicate that stopping transit trains, also called privileged railway communication, on Polish territory is prohibited. This norm is expressed respectively in Article 7(1) of the Prague Convention as follows: "Transit communication trains pass through Polish transit territory without stopping, except in cases where stopping is necessary due to railway traffic reasons, state border or customs security." and in Article 7(2) of the Głuchołazy Convention: "Privileged trains do not stop on Polish territory except for incidents provided for by this Convention, and when technical or customs reasons require stopping." Passenger trains on the Krnov – Głuchołazy – Jeseník route pass through Głuchołazy station as part of transit traffic. Importantly, the operation of transit transport on railway lines No. 343 and 333 requires a technical stop at Głuchołazy station to change the train's direction of travel. According to Article 3(4) of the Głuchołazy Convention, it is prohibited to disembark or embark from privileged trains on Polish territory. It is also prohibited to issue or accept any objects from persons using these trains. This does not apply to the train crew regarding the performance of official duties related to the movement of privileged trains. This means that despite the physical stop of the train at Głuchołazy station, it is not possible to enter or exit the carriages, as conducting any commercial activities on transit trains within Poland is forbidden. The implementation of this legal norm is reflected in practice. The railway infrastructure manager does not publish information about the arrival and departure times of transit trains on public timetables and states that there are no commercial stops of trains operated by the Czech carrier at Głuchołazy station [3]. Due to the classification of these transports as transit traffic, the connection does not have the status of public railway transport conducted in the cross-border zone in accordance with Article 7(3) of the Act on Public Mass Transport [14], which would allow transforming the technical stop into a commercial stop and legalizing the possibility of using cross-border connections to and from Głuchołazy station. In such a case, the role of the transport organizer would be performed by the Opole Voivodeship Authority, which would bear the burden of co-financing the connection.

Another example cited in this text of a separate legal regulation for transit transport is the Polish section of railway line No. 346 between the Czech station Hrádek nad Nisou and Zittau in Germany. Despite the daily operation of several pairs of cross-border trains connecting the Liberec region and Saxony, none of them stop on Polish territory.

The problem becomes even more pronounced when analyzing the characteristics of railway connections passing through the Polish segment of line No. 346. A significant portion of trains traveling through the transit section connect the Czech Liberec and the German cities of Varnsdorf and Seifhennersdorf. Express trains reach the capital of Saxony, Dresden, swiftly. Along their route, they cross the state border up to four times on a relatively short operational segment, passing respectively through the territories of the Czech Republic, Poland, Germany, and again the Czech Republic, ending their journey in Germany. The Polish section of the route is the only one inaccessible to passengers due to its designation in 1964 as a transit section. Despite the convenient route of the railway line through the central part of the town of Porajów, trains pass through its area without stopping. Historically, there was a passenger stop in the town allowing for commercial activities; however, the last scheduled train stops occurred before World War II [7].

Local government representatives have repeatedly taken the initiative to build infrastructure that would allow for the processing of passengers, thereby integrating the town into the international railway network [2]. The modernization of the line, along with the construction of a passenger stop, was also not included in the Sustainable Development Plan for Public Mass Transport for the Lower Silesian Voivodeship due to the lack of its connection with the rest of the Polish railway network. The construction of the stop was also the subject of a parliamentary inquiry sent to the Minister of Infrastructure in 2009 [5]. In response, it was pointed out, among other things, that the opening of a passenger stop in the town of Porajów would entail the necessity for the railway infrastructure managers from the Czech Republic and Germany to forgo participating in the costs of bridge repairs and line modernization, thereby transferring this obligation to the Polish State. It was also raised that the revenue obtained from granting access to the railway line to foreign carriers would not cover the costs of repairing the railway infrastructure. The arguments presented seem to contradict the idea of ensuring access to public transport within the broad sense of public service. Furthermore, according to Article 13 of the Prague Convention, Polish State Railways are obliged to maintain with their own resources the section of the line and the railway facilities used for transit communication in a condition that ensures the efficiency and safety of train operations. Thus, the argument that opening the line to Polish passengers would significantly increase its operating costs appears to be flawed, as current legal provisions make the ongoing maintenance of the railway line the responsibility of the Polish infrastructure manager for many years. Moreover, the modernization of the railway line, given the current line speed of approximately 30-40 km/h, seems inevitable regardless of the status of the connections being operated on it. For comparison, the line speed on the relevant railway line outside the borders of the Republic of Poland is around 80 km/h. It should also be noted that modernizing the railway line to achieve a speed similar to its other sections, along with the construction of a passenger stop, would not have negative effects on train travel time, as the additional stop would be compensated by the train passing through Polish territory at a higher line speed.

The functioning of cross-border traffic has been regulated quite differently in the general agreement concluded between the Republic of Poland and the Federal Republic of Germany in 2012, which came into effect almost four years later. The subject of this regulation includes the obligations of the parties both concerning classical border crossings, understood as the point where railway lines have their ends on both sides of the border, and so-called cross-border lines, whose location is within the territory of one state but functionally serves entirely or significantly the other state. To define transit railway transport in the border area, the legislator uses the concept of privileged transit.

In Article 4(g) of the aforementioned agreement, it is stated that this refers to railway communication on a railway line crossing the Polish-German state border between stations located on the territory of one contracting party, with a designated section of this line undergoing transit passage through the territory of the other contracting party. Railway communication is carried out under simplified conditions compared to the general rules for admitting the contracting party through whose territory the transit occurs, without the need to change the railway system in legal, technical, or operational terms. It can thus be observed that the agreement also classifies transit transport as a qualified type of crossing the state border, but unlike the previously discussed agreements, it indicates the simplification of transport implementation conditions rather than their additional tightening.

The agreement contains a closed list of railway line sections where cross-border traffic takes place. Essentially, this status has been assigned to railway line No. 324, running along the Lusatian Neisse River on the Polish-German border. To understand why the legislators of both countries decided to regulate traffic on this railway line in a particular manner, it is

necessary to briefly outline its characteristics. Until the end of World War II, this route ran entirely on the territory of the Third Reich. As a result of decisions made at the Yalta Conference, the border between the Polish People's Republic and the German Democratic Republic was established along the Oder and Lusatian Neisse Rivers. Consequently, the railway line connecting the border towns of Görlitz and Zittau, now bearing the Polish number 324, was intersected by the state border in four places over a stretch of nearly 15 kilometers. This route necessitated the adoption of dedicated legislative solutions to ensure the operation of trains and the maintenance of railway infrastructure. The first attempt to regulate this matter occurred relatively quickly, as three years after the end of World War II, in 1948, an agreement on privileged transit traffic was concluded between the two countries [1]. The next act regulating border traffic for most of the period when the Lusatian Neisse border divided the Polish People's Republic and the German Democratic Republic was the agreement between the Government of the Polish People's Republic and the Government of the German Democratic Republic on mutual privileged railway transit traffic on the sections of railway lines Hagenwerder - Krzewina Zgorzelecka - Hirschfelde - Zittau - Porajów, concluded in 1959 [10]. This was of significant importance due to the existence of the Krzewina Zgorzelecka railway station on the Polish side of the line, which before World War II was administratively incorporated into the town of Ostritz, located in its immediate vicinity but on the western side of the Lusatian Neisse River. This is a peculiar case where a railway station located in Poland significantly served passengers residing on the other side of the border. Consequently, the aforementioned international agreements defined the rules for passage and the security control procedures that passengers boarding and alighting at the Krzewina Zgorzelecka station had to undergo. For a considerable period when the Lusatian Neisse border divided the Polish People's Republic and the German Democratic Republic, it was possible for German passengers to use the station to cross into East Germany via a footbridge connecting the station to the town of Ostritz. However, this process was conducted under strict supervision by the customs services of both countries. The 1959 agreement included border and customs provisions, indicating, among other things, that trains of the German State Railways communicating with the town of Ostritz could stop at the Krzewina Zgorzelecka station, but individuals, luggage, baggage shipments, express and freight, as well as railway rolling stock, were subject to general customs supervision [6]. In subsequent years, further agreements were enacted, establishing increasingly less stringent restrictions on passenger transport. In 1992, an agreement on so-called small border traffic was concluded [13], significantly simplifying the border crossing procedure for the specifically mentioned border municipalities. After Poland joined the Schengen Agreement in 2007, border controls were generally abolished.

Currently, the agreement in force between the Republic of Poland and the Federal Republic of Germany from 2012, in Article 2, contains general provisions regarding cooperation principles, such as supporting actions aimed at procedural facilitation for the implementation of railway communication across the common state border, supporting and strengthening the cooperation of all railway communication participants across the common state border, and enabling privileged transit as discussed in this text. Article 9(1) indicates that in privileged transit, the law of the contracting party where the transport begins and ends is applied.

The parties to the agreement have also regulated procedures in the event of the reinstatement of border controls in accordance with Regulation (EC) No. 562/2006 of the European Parliament and of the Council of March 15, 2006, establishing a Community Code on the rules governing the movement of persons across borders (Schengen Border Code). In this case, according to Article 10 of the agreement, any unforeseen stops of trains in privileged transit must be reported by the railway company to the appropriate border

authorities. Article 9 of the discussed agreement, however, states that each of the contracting parties may periodically completely or partially suspend privileged transit, if required by railway traffic safety, after prior written notification to the other party. In urgent cases, oral notification to the other party is permitted, which the notifying party must additionally confirm immediately in writing.

Analyzing the aforementioned models of legal regulation of privileged transit traffic, it can be observed that in both cases, it is treated as a qualified form of cross-border traffic in the so-called classical framework. However, the legislator's approach to the accessibility of connections for passengers from Poland is entirely different. The solutions operating on the Polish-German border ensure the application of a series of simplifications in the customs clearance procedure and railway traffic management, which ultimately led to the stimulation of traffic on section line No. 324 and enabled residents of Krzewina to use trains operated by the German carrier, running hourly throughout much of the day. Polish trains ceased servicing the station in 2000. Legislative solutions enacted for the railway lines in the Głuchołazy and Porajów areas completely prevent the servicing of passengers on Polish territory, despite the existence of favorable infrastructural conditions that would allow Polish towns to be integrated into the cross-border passenger connection network. In many strategic documents, transit transports on the aforementioned lines are not included, purportedly due to the lack of connections with the rest of the Polish railway network. However, currently, under the regime of the Schengen Agreement regulations, which guarantee significant simplification of border crossing procedures, the focus of regional functional areas has significantly changed. In the era of free movement of persons, workers, services, and goods within the European Union, local connections are sometimes stronger between municipalities on opposite sides of the border than between other territorial self-government units within a single state. Therefore, it is crucial for the legislator to recognize the urgent need to revise international agreements that stimulate the development of local cross-border connections, including those initiated within the framework of privileged transit traffic.

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