

Delivering expert knowledge to global counsel



## Environment - Switzerland

### Federal Supreme Court Decisions on Recurring Issues

Contributed by [Pestalozzi Lachenal Patry](#)

December 03 2007

#### Introduction

#### Telecommunications Antennae

#### Noise Restrictions

#### Odour Nuisances

### Introduction

The Swiss Federal Supreme Court regularly decides cases about the installation of antennae for mobile communications, noise emanating from public facilities such as restaurants and odour nuisances caused by factory plants. Recent decisions of the court addressed the following questions:

- May a local authority ban telecommunications antennae from its territory?
- What kind of restrictions must proprietors observe so that their outdoor facilities comply with noise restrictions, particularly during the evening?
- To what extent must a neighbourhood of a factory plant tolerate odour nuisances?

### Telecommunications Antennae

Swiss federal environmental laws regulate the installation and operation of telecommunications antennae, including the protection of the public against radiation. Therefore, neither cantonal nor local authorities may enact further regulations on this issue. The federal laws provide that antennae may be banned only in order to protect the environment and not for any other reasons.

According to the Supreme Court, only certain circumstances warrant the banning of telecommunication antennae from certain locations for reasons other than the protection of the environment and related interests. The court points out that the competent authority must:

- consider all legal provisions on the supply of mobile telecommunications services, including the provisions regarding competition among the various telecommunications service providers;
- consider all existing environmental laws; and
- base such ban on the applicable land use and planning laws.<sup>(1)</sup>

In addition, the creation of particular 'land use zones' - for instance, zones where telecommunications antennae are allowed and zones where they are not allowed - must be based on a legal regulation. Only under these circumstances it is possible to ban telecommunications antennae - for example, in order to preserve the particular character of a village.

### Noise Restrictions

Swiss environmental laws allow for the enactment of further legal provisions in order to limit noise emissions, provided that these are technically, economically and operationally acceptable for affected persons. According to the court, an evaluation of the impact of legal provisions on noise restrictions must consider all affected enterprises, not only that of a single proprietor. The financial situation of a single business is not relevant to an assessment of whether the impact of particular provisions is acceptable.

<sup>(2)</sup> The court held that the restriction of the opening hours of outdoor facilities (eg, terraces and patios) after midnight from Sunday night to Thursday night does not excessively affect the profitability of a coffee house or bar. The court further pointed out that after an outdoor facility has closed, it is still possible to serve guests indoors.

## Odour Nuisances

As in the case of noise restrictions, Swiss environmental laws allow for the limitation of odour nuisances, provided that this is technically, economically and operationally acceptable for affected persons. According to the court, neighbours of factory plants that cause bad odours must tolerate such odour emissions, which have only a low environmental impact. The so-called 'precautionary principle' of environmental law aims to limit odour nuisances but not to eliminate them entirely. The court held that for low emission values the principle of proportionality also applies, which is based directly on the Swiss Constitution. Nevertheless, the court stated more precisely than in previous decisions that in the case of low emissions which can be reduced considerably through small measures, it is reasonable to request such measures. In contrast, if low emissions cannot be reduced by small measures, then the neighbours must tolerate the emissions.<sup>(3)</sup>

*For further information on this topic, please contact [Max Walter](#) or [Michael Lips](#) at Pestalozzi Lachenal Patry by telephone (+41 44 217 91 11) or by fax (+41 44 217 92 17) or by email ([max.walter@plplaw.ch](mailto:max.walter@plplaw.ch) or [michael.lips@plplaw.ch](mailto:michael.lips@plplaw.ch)).*

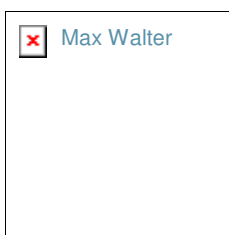
## Endnotes

- (1) Swiss Federal Supreme Court Decision 133 II 64, 1A.129/2006, dated January 10 2007.
- (2) Swiss Federal Supreme Court Decision 1A.179/2006, dated October 16 2006.
- (3) Swiss Federal Supreme Court Decision 133 II 169, 1A.135/2006, dated May 2 2007.

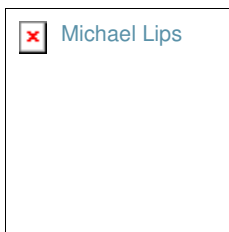
The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

## Authors

### Max Walter



### Michael Lips



Official Online Media Partner to the International Bar Association  
An International Online Media Partner to the Association of Corporate Counsel  
European Online Media Partner to the European Company Lawyers Association