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Environment - Switzerland

Supreme Court Settles Dispute on Allocation of Clean-Up Costs

Contributed by [Pestalozzi Attorneys at Law](#)

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Facts

Decision

Comment

In a recent case regarding contamination at Zurich airport⁽¹⁾, the Federal Supreme Court ruled on whether the Zurich Office for Waste, Water, Energy and Air Quality or the Federal Office of Civil Aviation was to be considered the competent authority on the allocation of clean-up costs under Article 32d, Section 4 of the Environmental Protection Law.⁽²⁾

Facts

In 2000 the Zurich Office for Waste, Water, Energy and Air Quality asked the operating company of Zurich airport to clean up certain contaminated sites at the airport. In 2003 the Federal Office of Civil Aviation made a similar request. Following completion of the clean-up, the operator requested a formal decision from the federal office on the final allocation of the incurred clean-up costs. The operator's main claim was for the restitution of costs incurred. However, instead of allocating these costs, the federal office issued a formal statement denying its competence to decide this matter and forwarded the operator's request to the Zurich office. The Zurich cantonal authority appealed to the relevant recourse commission, requesting that the federal office be instructed to decide on the cost allocation. The recourse commission transferred the matter to the Federal Administrative Court, which dismissed the appeal. The Zurich office again filed an appeal, this time with the Federal Supreme Court.

According to Article 32c, Section 1 of the Environmental Protection Law, the cantons must ensure that certain contaminated sites are cleaned up, particularly if the contamination is likely to have a damaging or dangerous impact. The inspection, supervision and clean-up may be carried out by the relevant cantonal authority or through a third party (Article 32c, Section 3). In principle, the clean-up costs are borne by the polluter. In cases where there were several polluters, the costs are allocated proportionally based on the extent of each polluter's impact. In the event of uncertainty over the allocation of costs, each polluter may request an official decision from the authority (Article 32d, Section 4). The law does not explicitly state which authority is competent.

With a few exceptions, the cantonal authorities are responsible for the implementation of the Environmental Protection Law. One exception is stated in Article 41, Section 2 – if a federal authority enforces a federal law or an international treaty, that federal authority then takes charge of the implementation of that law.

Decision

In its decision of July 17 2008 the Supreme Court determined that an authority ordering or carrying out cost-triggering measures is also then competent to allocate the associated costs. The court highlighted the close connection between the clean-up order and the decision on cost allocation.

Pursuant to Article 41, Section 2 of the Environmental Protection Law, the Federal Supreme Court ruled on the extent to which the federal office was involved in the matter at hand. It based its decision on an aviation plan approval proceeding which the office initiated in August 2000. The court denied the exclusive competence of the federal office. The court also held that the aviation plan approval proceedings were not directly related to the clean-up process and would have been initiated independently of the clean-up process.

Finally, the court considered whether the federal or Zurich cantonal office originally initiated and carried out the clean-up of the contaminated site. Since it was undisputed that it was the cantonal office that had initiated the clean-up, no further investigations by the court were necessary on this point. Also, it was beyond question that the cantonal office assisted the operator throughout the clean-up process and that the federal office appeared only at a later stage, without taking charge.

As a result, the court denied the competence of the Federal Office of Civil Aviation. Zurich's Office for Waste, Water, Energy and Air Quality both initiated and assisted with the entire process, and was thus competent to decide on the allocation of the clean-up costs.

Comment

The authority that orders clean-up measures and that supervises or carries out the clean-up process is competent to allocate the costs at the request of an involved party, in particular a polluter. As a rule, cantonal authorities are responsible for implementing the Environmental Protection Law and the involvement of a federal authority does not necessarily give it the competence to decide on cost allocation. Competence rests with the leading authority – in this case, the Zurich cantonal office.

For further information on this topic, please contact [Anne-Catherine Imhoff](mailto:anne-catherine.imhoff@pestalozzilaw.com) or [Michael Lips](mailto:michael.lips@pestalozzilaw.com) at Pestalozzi Attorneys at Law by telephone (+41 44 217 91 11) or by fax (+41 44 217 92 17) or by email (anne-c.imhoff@pestalozzilaw.com or michael.lips@pestalozzilaw.com).

Endnotes

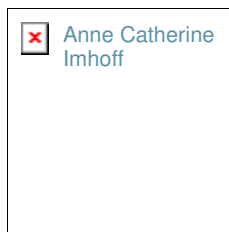
(1) Supreme Court Decision on July 17 2008 (BGE 1C 255/2007).

(2) *Umweltschutzgesetz* (USG; SR 814.01).

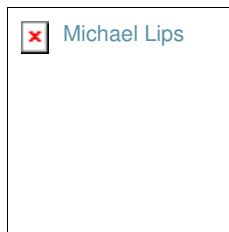
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Authors

Anne Catherine Imhoff



Michael Lips



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