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Environment - Switzerland

Jurisdiction on Parking Charges

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The Federal Court recently ruled on parking fees in connection with the construction of an exhibition and trade centre in the Canton of Zurich.⁽¹⁾

Facts

In 2007 the local authority granted a building permit for the construction of the exhibition and trade centre. The Association of Transport and Environment of Switzerland – one of Switzerland's major organizations for the protection of the environment – appealed against the permit. In recent years the association has made frequent use of its right of judicial appeal, resulting in delays to several important construction projects.

The superior cantonal authority supplemented the permit with an additional provision stating that visitors must pay a minimum parking fee of Sfr2 for their first hour of parking, followed by a diminishing scale of extra payments of at least Sfr1 for each subsequent hour. In addition, the supplemented permit prohibited any provision of free parking and any refunding of parking fees. The authority also required the payment of parking fees to be enforced by measures at least as effective as a central teller machine in combination with a barrier.

The landowner appealed to the cantonal administrative court. The court confirmed that visitors must pay a fee from the beginning of their parking time and that the hourly rate may decrease over the course of time. The court also confirmed that, for the first hour of parking, the fees must amount to at least Sfr2, and for the second hour, the fees must amount to at least Sfr1. In contrast to the lower authority, the court did not require a fee to be paid for time parked in excess of two hours.

The Association of Transport and Environment also appealed this decision. It disputed whether it is lawful for parking fees to cease accruing after a certain period of time has elapsed (in the present case from the third hour of parking onwards). Based on certain considerations, the Federal Court rejected the appeal.

Considerations

Measures to control and limit the use of car parks at facilities which attract heavy traffic aim to reduce the emission of pollutants, as per Article 12, Section 1(c) of the Federal Act on the Protection of the Environment. The law does not include specific rules on such measures. Therefore, the cantonal authorities enjoy significant discretion in defining adequate measures. However, such measures must always lie in the public interest, be appropriate and help to reduce emissions.

The cantonal court held that the establishment of a Sfr2 fee for the first hour of parking was an effective way of reducing emissions. However, the effectiveness of parking fees depends mainly on the time that visitors expect to stay at the particular facility. For visitors expecting to stay less than one hour, the fees for long-term parking would have little impact. Nevertheless, the court held, excessively low fees for additional hours of parking may create an incentive for visitors to leave their vehicles in the carpark for longer periods.

The court based its assessment on an expert study of traffic planning. According to the study, the average time a visitor spends at a specialized retailer is 46 minutes, whereas the average visitor spends 48 minutes at specialized retailers which are part of a shopping centre. Only 13% of visitors stay longer than one hour and even fewer (7%) stay longer than two hours.

Against this background, the court held that the minimum fees for the first two hours of parking were an effective and adequate measure to reduce air pollution. Further, the court held, the few visitors who stay longer than two hours also reduce traffic and emissions because, by remaining in their parking spaces for longer, such visitors cause fewer parking spaces to be available. The court held that the question of whether the imposition of an open-ended obligation to pay parking fees effectively reduces emissions was unclear and therefore concluded that such an open-ended obligation would be contrary to law.

Federal Court Decision

Even though the Federal Court confirmed the cantonal decision, it disagreed with the direct application of the aforementioned study, since the exhibition centre project was neither a specialist retailer nor a shopping centre. In exhibition centres specialized information and advice are provided, and only a small amount of merchandise is sold. The court referred to the environmental impact assessment of the project, which estimated that the average visitor would stay between one and four hours. Since this average stay is considerably longer than in the case of a shopping centre, the question arose as to whether different measures towards the reduction of traffic and emissions needed to be implemented.

A different expert study states that a parking fee of at least Sfr2 per hour is an effective measure in reducing traffic and air pollution. According to the Federal Office for the Environment, the total amount of the parking fee determines the effectiveness of the measure and, although Sfr2 is not a large fee, it usually has the desired effect.

In view of these considerations, the court deemed the measures defined by the cantonal court to be effective and held that the fees determined were consistent with federal environmental legislation. The court rejected the request to increase the fees, even though these fees were not high (Sfr3 for two hours of parking).

Related Jurisdiction

In an earlier decision the Federal Court confirmed that the obligation to charge a fee for parking in carparks which serve shopping centres is consistent with Article 12, Section 1(c) of the Federal Act on the Protection of the Environment.⁽²⁾ Therefore, the imposition of parking fees controls the volume of traffic and is deemed to be an appropriate measure in helping to reduce the emission of pollutants at their source, as required by the law (Article 11, Section 1). This decision formed the basis for one discussed above.

In another earlier decision the Federal Court upheld a particular land-use plan for a construction project, which obliged the landowner to charge parking fees only in a general way.⁽³⁾ The court stated that a specific definition of such an obligation is necessary only in the building permit of each concerned facility.

Emissions may be reduced not only by charging parking fees, but also by reducing the number of available parking spaces. The Federal Court had confirmed these possibilities in several earlier decisions.⁽⁴⁾

Comment

The latest decision of the Federal Court marks a further milestone with respect to the principle of the steering effect of parking fees. The decision highlights the fact that different kinds of facility require different handling with regard to the charging of parking fees and the effective reduction of emissions.

The decision also confirms the lawfulness of the imposition of parking fees which cease to accrue after a certain period of time. The court did not define a maximum parking time, thus allowing for the provision of long-term parking for very low fees. The question arises as to whether the possibility of such long-term parking violates the obligation to control and limit the use of carparks.

The Federal Court did not contradict the Zurich court's opinion that long-term parking reduces car movement – and therefore emissions – since it leaves fewer parking spaces available. This view seems questionable since experience shows that, rather than reducing traffic, a lack of parking spaces often

results in additional car movement, traffic jams and emissions.

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Endnotes

- (1) Decision 1C_412/2008 of the Swiss Federal Court, March 24 2009.
- (2) Decision 125 II 129 of the Swiss Federal Court, March 3 1999.
- (3) Decision 1A 125/2005 of the Swiss Federal Court, September 21 2005.
- (4) For example, Decision 1A 189/2004 of the Swiss Federal Court, December 3 2004, Decision 131 II 470 of the Swiss Federal Court May 27 2005; Decision 131 II 103 of the Swiss Federal Court, January 4 2005.

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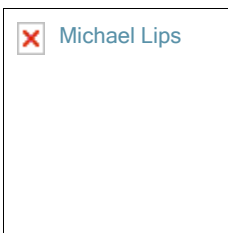
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