

Delivering expert knowledge to global counsel



Environment - Switzerland

Federal Court Decision on Noise Control of Open-Air Sports Facilities

Contributed by [Pestalozzi Lachenal Patry](#)

September 03 2007

[Facts](#)
[Decision](#)
[Comment](#)

Facts

The Federal Supreme Court recently decided a case regarding the permitted hours of use of an open-air sports facility which has recently been expanded.⁽¹⁾ Upon the request of neighbours, the cantonal administrative court at the lower instance allowed very restrictive hours of use: until 9:00pm from Monday to Friday and until 6:00pm on Saturdays, with no training or contests at all allowed on Sundays and holidays. In reaching this decision the cantonal court relied on a noise opinion from the Federal Laboratories for Material Testing and Research. The experts from the federal laboratories applied the German regulation on noise pollution from sports facilities, which considers the particular characteristics of noise resulting from sporting events. As the owner and constructor of the facility, the local authority concerned successfully contested the cantonal judgment. The Supreme Court revoked the decision and requested the cantonal court to render a new judgment in line with its considerations.

Decision

The Supreme Court pointed out the purpose of the Swiss regulation on noise pollution, which is to protect people from harmful and annoying noise emanating from new and existing facilities.⁽²⁾ Against this background, the Supreme Court held that it is appropriate to consider any noise that is caused by the use of a certain facility.

However, the Swiss regulation on noise pollution does not define particular limit values for all types of noise. No limit values exist for so-called 'non-technical' noise that is created by everyday life, such as the type of noise that results from sporting events. If no legal limit values exist, then the execution authority judges a nuisance based on a general rule of the Federal Act on the Protection of the Environment.⁽³⁾ According to this rule, the authority should judge on a case-by-case basis in order to ensure that a particular noise does not substantially disturb the wellbeing of people in its vicinity. The authority applies an objective view and considers scientific know-how as well as general experience. In this context, the relevant factors are:

- the nature of a particular noise;
- the time and frequency of its occurrence;
- the pre-existing noise exposure; and
- the noise sensitivity of a particular area.

The authority may also consider foreign or private guidelines, provided that they are technically justified and are based on the same criteria as the Swiss noise pollution law.

On behalf of the Supreme Court, the Federal Agency for Environment provided with an evaluation scheme and determined, based on the German regulation, approximate values that correspond to the Swiss planning and nuisance limit values. The federal agency concluded that the report from the federal laboratories did not meet this standard. Since it was incomplete, the report from the federal laboratories could not be used to assess the project at hand. Unlike the conclusions of the federal laboratories and the cantonal court, the standard set by the federal agency permits substantially more liberal hours of use of the

facility. In particular, training is allowed until 10:00pm during the week and for a few hours on Sundays. However, in view of the precautionary principle, certain restrictions remain possible. As these restrictions had already been addressed by the previous instances and authorities, the federal agency did not decide further on such restrictions.

The Supreme Court confirmed the federal agency's approach, particularly the application of the German regulation insofar as its criteria are in line with the Swiss provisions on noise pollution. Further, the Supreme Court refused to render a final judgment on the permitted hours of use. As different new measures of noise pollution were suggested, the Supreme Court could not decide as the first and only instance whether the project at hand was in line with Swiss law. Therefore, it requested the cantonal court to render a new judgment that is in line with its considerations. The Supreme Court held, as already concluded by the federal agency, that the hours of use defined by the cantonal court were most likely too restrictive. However, even though the Supreme Court did not anticipate more restrictive hours of use than those fixed by the cantonal court, it indicated that certain restrictions remained possible owing to the precautionary principle.

Comment

The Supreme Court rejected the case, relaying it back to the cantonal court for a new judgment without giving clear instructions. Therefore, it is uncertain how exactly this particular facility may be used without violating Swiss noise pollution laws. Even though the Supreme Court indicated that the cantonal court had most likely defined overly restrictive hours of use, it remains uncertain to what extent the precautionary principle will limit the permitted hours of use.

The Supreme Court's decision is significant because similar legal disputes with regard to hours of use of open-air sports facilities are pending in a number of other Swiss towns. It is likely that this case and its final result will set the benchmark for these disputes.

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 or michael.lips@plplaw.ch).

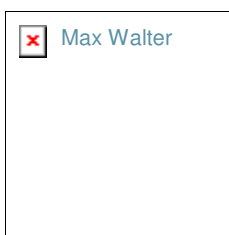
Endnotes

- (1) Federal Supreme Court Decision 1A.195/2006, 1A.201/2006 dated July 17 2007.
- (2) Article 7 of the Federal Act on the Protection of the Environment and Articles 1(1) and 2(a) of the Federal Regulation on Noise Protection.
- (3) Article 15 of the Federal Act on the Protection of the Environment.

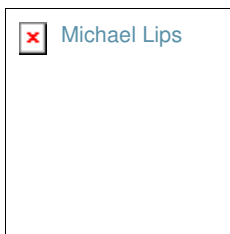
The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

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

© Copyright 1997-2009 Globe Business Publishing Ltd