

Federal Supreme Court decision on building in noise-affected areas

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[Introduction](#)

[Legal framework](#)

[Past practice](#)

[Supreme Court decision](#)

[Conflicting interests](#)

[Comment](#)

Introduction

Swiss environmental laws provide for certain requirements to allow new building zones and new buildings in areas that are affected by noise. In order to assess compliance with these requirements, noise measurements are required.

Environmental laws also define how to conduct such measurements. In a recent decision,⁽¹⁾ the Federal Supreme Court decided for the first time that a widely used method of measurement – so-called 'ventilation-window practice' – is not compatible with legal requirements.

Legal framework

With regard to noise protection, the Federal Act on the Protection of the Environment⁽²⁾ distinguishes between the planning of new building zones and the construction of new buildings. For this purpose, the act and the Federal Ordinance on Noise Protection⁽³⁾ use planning values and ambient limit values. In terms of noise protection, planning values are stricter than ambient limit values.

On the basis of the precautionary principle, new building zones intended for residential buildings or for other buildings projected as long-stay accommodation may be planned only in areas where the ambient noise levels do not exceed the planning values or in areas where these values can be met by the application of planning, design or structural measures.

With regard to the construction of new buildings, the law is less strict. Building permits for new buildings projected as long-stay accommodation are issued if the ambient limit values are not exceeded. If the ambient limit values are exceeded, such building permits are issued if the rooms are suitably arranged and any necessary additional soundproofing measures are taken.

As to noise measurements for buildings, the ordinance provides that noise exposure levels are determined at the centre of open windows in rooms sensitive to noise.

Past practice

According to past widespread practice of construction and environmental authorities, in order to issue a building permit it was sufficient that:

- the ambient limit values were met at least at one window of each noise-sensitive room; and
- the concerned window was suitable to ventilate the room.

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Compared to a stricter practice – pursuant to which each window of a noise-sensitive room must meet the ambient limit values – the ventilation-window practice increased the possibilities to construct new buildings in noise-affected areas.

Supreme Court decision

Facts

The competent authority granted building permits for several single-family houses in an area that adjoins an industrial plant. The plant is operated 24 hours a day, seven days a week. In the concerned area, the ambient limit values are exceeded by up to 10 decibels.

When granting the building permits, the authority applied the ventilation-window practice and requested a number of construction and design measures in order to reduce the noise impact inside the planned buildings.

A third party successfully objected to the building permits at the cantonal administrative court. Thereupon, the builders and future house owners appealed at the Federal Supreme Court.

Decision

When deciding about the legal admissibility of the ventilation-window practice, the Supreme Court held that the protection of people's health is an essential purpose of the concerned legal provisions. The court confirmed the view of the previous instance that in the long term, health protection may not depend on how specifically inhabitants ventilate their rooms.

The court further pointed out that the ventilation-window practice reduces the need for additional planning, construction and design measures for noise protection. The disputed practice also reduces the pressure on the authorities to require measures at the source of the noise, which have priority according to the Federal Act on the Protection of the Environment.

Against this background, the court held that the ventilation-window practice violates the purpose of the law and is therefore not admissible. Accordingly, each window of a noise-sensitive room must meet the ambient limit values.

Conflicting interests

Noise protection may conflict with the interests of efficient land use and high-density building.

In this regard, the court held that not only interests in noise protection, but also important spatial planning interests must be considered, especially because the uncontrolled development and use of soil have become serious problems over the past 30 years. According to the court, the high-quality inward urban development requires increased attention.

Nevertheless, as to exemption permits with regard to the ambient limit values, the court defined fairly strict requirements. Accordingly, such exemption permits may be granted if:

- a building project is desirable for the inward urban development;
- the ambient limit values are exceeded only insignificantly;
- it is not possible to meet the ambient values with satisfactory urban development; and
- appropriate residential comfort is ensured with ventilating windows on the far side of the noise, as well as further measures.

In this case, these requirements were not met and therefore an exemption permit could not be granted.

Comment

Given that the ventilation-window practice had been applied in about half of the Swiss cantons, the Supreme Court decision will have a major effect on building activities in noise-affected areas.

The requirements to obtain building permits in such areas have certainly increased. In particular, now each window of a noise-sensitive room must meet the ambient limit values.

While the court acknowledged the importance of spatial-planning interests, it defined quite a high threshold for exemptions from the ambient limit values. Even though the requirements for such exemption permits leave a considerable amount of discretion with the authorities, they might not be granted easily in the future, which may reduce the importance of spatial-planning interests.

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Endnotes

(1) Federal Supreme Court, 1C_139/2015, 1_140/2015 and 1_141/2015, March 16 2016, planned for publication as principal decision.

(2) Federal Act on the Protection of the Environment, SR 814.01.

(3) Federal Ordinance on Noise Protection, SR 814.41.

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