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Environment - Switzerland

Case law on light pollution

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Federal case law on light emissions focuses on the legal provisions governing such emissions, the assessment of their harmful effects and the underlying precautionary principle.

Legal framework

Over recent years the Federal Supreme Court⁽¹⁾ and the Federal Administrative Court⁽²⁾ have ruled on several cases on light emissions. Regarding the legal framework governing such emissions, both courts have held that the Environmental Protection Act⁽³⁾ applies. In particular, the act aims to protect people, animals and plants against harmful effects. Among other causes of harmful effects, such as pollution of air, water and soil, the law explicitly includes radiation in the definition of the term.⁽⁴⁾ The courts held that artificial light is radiation in the sense of this definition. In this context, the Federal Supreme Court specified that solar light reflected by a solar plant or other constructions is considered artificially produced light.⁽⁵⁾

However, with regard to the maximum amount of light emissions permitted, no explicit legal provisions or even limit values exist. Accordingly, the act's provisions on the maximum emission values for air pollution⁽⁶⁾ and the act's general provisions on emissions⁽⁷⁾ also apply to light emissions, since these provisions reflect general rules.⁽⁸⁾

Harmful effects

Since no particular Swiss regulation governs the permissible amount of light emissions, a case-by-case assessment based on other appropriate criteria is required - similar to the assessment of noise from sporting events, for which no particular regulation exists.⁽⁹⁾ The Federal Supreme Court and the Federal Administrative Court consider such factors as:

- location;
- any other and pre-existing light pollution coming from other lighting installations; and
- the number of people disturbed.

With regard to the threshold values and extent of a disturbance to be accepted, the courts consult expert opinions, specialist departments and guide values issued by private organisations or which are part of foreign regulations on light emissions, provided that such opinions, values and regulations have a sound technical basis and are consistent with Swiss law principles.

Accordingly, several cases⁽¹⁰⁾ were based on expertise collected from different experts and the Federal Office for the Environment. The courts also referred to non-Swiss guidelines and directives.⁽¹¹⁾

In a case relating to the illumination of an outdoor sports field, the Federal Supreme Court confirmed the application of these non-Swiss guidelines by competent authorities. It also noted that the Guide on the Limitation of the Effects of Obtrusive Light from Outdoor Lighting Installations (CIE 150:2003), issued by the International Commission on Illumination, was included in a European norm for sports lighting,⁽¹²⁾ which in turn became a Swiss norm.⁽¹³⁾ In its decision, the court held that the light emissions in dispute complied with these norms and were therefore permissible.⁽¹⁴⁾

In a case relating to the light emissions from a train station, the Federal Administrative Court held that even draft regulations of a private organisation like the Swiss Society of Engineers and Architects (SIA) may be considered when assessing a situation.⁽¹⁵⁾ In the meantime, the SIA formally issued the regulation concerned.⁽¹⁶⁾

Minor cases

As to the limitation of emissions, the precautionary principle underlying the act states that, irrespective of

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existing environmental pollution, emissions must be limited as much as technology and operating conditions allow, provided that this is economically viable.⁽¹⁷⁾ This also reflects the principle of proportionality.

Against this background, courts recognise minor cases in which no emission-reducing measures are required. Such cases are given, for instance, if the emission source produces only minor additional emissions compared to the pre-existing ones. Consequently, there is no public interest in the reduction of emissions outweighing the private interest in operating the concerned facility. In the same case relating to the outdoor lighting of a building, the Federal Supreme Court also pointed out that Swiss environmental laws provide for no basis to prohibit any emission that is unnecessary in the strictest sense of the word.⁽¹⁸⁾ Accordingly, there is no right to complete darkness.

From a procedural point of view, it is at least questionable whether in such a minor case that a concerned person (eg, a neighbour) has a right of appeal or is entitled to request emission-reducing measures, since this would require that the emissions affect the concerned person in a special manner, more than any other individual.

Comment

Since no explicit provisions govern the maximum permitted amount of light emissions, the act's provisions on the maximum emission values for air pollution and the act's general provisions on emissions apply to light emissions as well. In addition, a case-by-case assessment based on other appropriate criteria is required, and the concerned authorities may refer to expert opinions and guide values issued by private organisations or which are part of foreign regulations on light emissions. Finally, no emission-reducing measures are required in minor cases.

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

Endnotes

- (1) Federal Supreme Court 1C_105/2009, October 13 2009; Federal Supreme Court 1C_216/2010, September 28 2010; and Federal Supreme Court 1C_177/2011, February 9 2012.
- (2) Federal Administrative Court A-3358/2011, October 23 2012.
- (3) *Umweltschutzgesetz*, SR 814.01.
- (4) Article 1(1) and Article 7(1) of the act.
- (5) Federal Supreme Court 1C_177/2011, February 9 2012, at 5.2.
- (6) Article 14 of the act.
- (7) Article 11 and the following.
- (8) Federal Supreme Court 1C_177/2011, February 9 2012, at 5.2.
- (9) Federal Supreme Court 1C_105/2009, October 13 2009, at 3.4.
- (10) Federal Supreme Court 1C_105/2009, October 13 2009, at 3.4; Federal Supreme Court 1C_216/2010, September 28 2010, at 3.2; Federal Administrative Court A-3358/2011, October 23 2012, at 7.3.
- (11) In particular, reference was made to the Guide on the Limitation of the Effects of Obtrusive Light from Outdoor Lighting Installations (CIE 150:2003), issued by the International Commission on Illumination ICL, and to the *Hinweise zur Messung und Beurteilung von Lichtemissionen*, 2000 (LAI 2000), issued by *Deutscher Länderausschuss für Immissionsschutz*.
- (12) EN 12193:2007.
- (13) SN EN 12193:2008.
- (14) Federal Supreme Court 1C_105/2009, October 13 2009, at 3.4.
- (15) Federal Administrative Court A-3358/2011, October 23 2012, at 7.3.
- (16) *Vermeidung unnötiger Lichtemissionen im Aussenraum*, SIA Norm 491, April 2013.
- (17) Article 11(2) of the act.
- (18) Federal Supreme Court 1C_216/2010, September 28 2010, at 5.

Comment or question for author

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