Court: property owners partly responsible for health damage caused by mobile base stations

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In a recently decided case, a German court has made it clear that property owners who rent out space for base stations and mobile masts assume liability for compensation for health consequences of the activity. Even if the radiation is lower than the applicable reference values from the authorities, this does not mean that the property owner is not responsible for negative health consequences. According to Björn Gillberg, the same responsibility principles also apply in Sweden.

The current case, which was decided in the District Court in Münster, Germany, concerned a municipality that wanted to terminate a lease agreement with a mobile phone operator regarding the placement of base stations. In the judgment, which rejected the municipality's demand for termination of a lease contract for mobile base stations, it is clarified that property owners who rent out space for mobile masts or base stations are responsible together with the telecom operators for any damage that the activity may cause.

Lawyer Krahn-Zembol, who represented the municipality, comments on the court's decision as follows:

"Since even official bodies such as the European Parliament's Research Service (STOA) point out that the limit values for electromagnetic radiation are too high by at least a factor of 10, the owner takes a liability risk when he or she enters into an agreement with a mobile phone system operator in this regard.

To date, in addition, almost 1,000 scientific studies, out of a total of more than 1,600 scientific studies on mobile telephony, have shown that biological effects and harmful effects occur with weaker radiation than the long-obsolete limit values in the 26th BImSchV . (Ordinance 26 on electromagnetic fields/Germany). The telecom operators have therefore for years in their annual reports warned their shareholders about further government regulation in the area.

Should set aside funds for liability risk

Attorney Krahn-Zembol continues:

In addition, the system managers have insured themselves for comparatively low liability sums. If the municipalities were to enter into an agreement anyway, they must ask themselves whether and to what extent they must set aside funds from the municipal budget for this liability risk. It's all reminiscent of the extensive (and even legal) exemption for nuclear power plant operators, who would only be liable for up to €250 million even in the event of a major accident (GAU). (...)"

The limit values do not protect against liability claims

Furthermore, the lawyer notes that the mere fact that the limit values are followed does not mean that liability for damages is eliminated:

“Although telecom operators repeatedly claim that they comply with the limit values when operating their facilities, this in no way excludes responsibility on their part or on the part of the property owner. On the contrary, the Federal Court (in Germany) has repeatedly declared that producers or operators cannot exonerate themselves by referring to compliance with the official limit values if they know or should have known of additional harmful effects etc.. This is already evident today, because even the majority of scientific studies show additional effects and harmful effects even though the radiation is lower than the limit values.

Because even the head of the Office of Technology Assessment at the German Bundestag, Prof. A. Grunwald, has pointed out that it is irresponsible to introduce new technology with significantly higher frequencies without prior investigation of the consequences, this is also a sign of a not insignificant liability risk."

In the current case, the court also clarified that the municipality is contractually responsible for 30 years. Property owners must therefore also be responsible for any new hazards and risks, which may be further enhanced by future upgrades and new mobile phone technology.

The same responsibility for property owners in Sweden

Björn Gillberg at the Environmental Center has for many years pointed out the joint and several liability that arises for property owners who rent out space for mobile masts and mobile base stations. He has previously pursued several successful compensation cases against environmentally disruptive business operators:

- It is the same principle that applies in Sweden. It is my opinion that in these cases both the telecommunications operator and the property owner are jointly and severally liable for damages as a result of the operation according to the current right to damages in the Environmental Code. This also applies to damages for reduced property values when it can be demonstrated that nearby residents have suffered from reduced property values due to the activity. The same principle also applies to, for example, wind turbines.

- The compensation is strict, i.e. there is an obligation to compensate even if the applicable conditions, limit values, etc. are complied with. Current tort law rules came about through our processes in the 70s, 80s and 90s when some of our processes wandered through the entire legal system and the judgments came to be codified by changing the legislation of the time.

Property owners often unaware of the responsibility

According to the organization Diagnose-funk, property owners should be informed about the current liability conditions. The vast majority are probably unaware of the sense of compensation

where they undertake when they provide space for mobile base stations or mobile masts.

Potential landlords of a plot/property should ensure in each individual lease agreement that the tenant (telecom operator) accepts to assume responsibility for all damage claims to an unlimited amount, for example according to the wording below:

"The tenant must indemnify the landlord [municipality, parish, housing association...] for all claims from third parties that arise in connection with the construction, operation or dismantling and otherwise in connection with the use of the rented property."

Source: https://www.diagnose-funk.org/aktuelles/artikel-archiv/detail?newsid=1846

References:

[1] In the judgment of the state court in Münster, AZ: 08 O 178/21, it is stated on page 11, second and third paragraph: "To the extent that the plaintiff wishes to derive the unforeseeableness of his own liability risk from the fact that at the time of the conclusion of the contract he did not know that in the external relationship he himself was responsible as responsible for the condition, he cannot succeed in this. As a public company, the plaintiff as a municipality must have been sufficiently aware of its own license violation. This does not mean that the defendant would have a possible information obligation that it did not fulfill, as the plaintiff claims. The possible lack of knowledge of one's own responsibility is due to one's own fault and not to the defendant's fault.

[2] Reinsurers warn their customers to insure mobile phone operators against EMF damage – the damage is not calculable. https://www.diagnose-funk.org/655, https://www.diagnose-funk.org/1412

[3] European Parliament Research Service STOA study, July 2021 at https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690012/EPRS_STU(2021)690012_EN.pdf

[4] Ericsson's annual report states the following about risks for Ericsson combined with new results about harmful health effects of the radiation from Ericsson's equipment:

"5.3 Any health risks associated with electromagnetic fields within the radio frequency band can lead to various product liability claims and lead to changes in the law.

The mobile telecommunications industry is affected by claims that mobile phones and other equipment that generate electromagnetic fields in the radio frequency band can expose individuals to health risks... Perceived risks or new scientific findings about the harmful health effects of mobile phones and mobile phone equipment may, however, affect the Company negatively through reduced sales or legal proceedings."

[5] In the judgment handed down by the regional court in Münster, it is stated on page 11, third paragraph: "To the extent that the claimant bases the, in his opinion, unreasonable risk of liability on a partial limitation of the defendant's liability, this does not lead to any other result either."

[6] BGHZ 81, 199, in detail also Krahn-Zembol, "Deutschland: Produktaftungsrisker bei EMF-emittierenden Anlagen und Geräten", Produktaftpflicht international 6/93, pp. 204-210.

[7] Especially for municipalities that intend to enter into an agreement with a system operator, it should be pointed out that the Regional Court of Münster found in its judgment that there is no reason for dismissal in the fact that the more extensive possible health risks below the limit values in 26: e BImSchV were not sufficiently obvious to the municipality when the agreement was concluded. On page 12, last paragraph and page 13 above in the judgment it is thus stated: "The appellant, as a public company, is not a private person who is in particular need of protection. According to its own statement, the discussions about possible health risks from mobile radio installations have not only been public for many years, even if the limit values in the 26th BImSchV are followed, but "scientifically based doubts" were known even before the agreement was concluded. In this regard, the appellant municipality must allow the knowledge of its mayor at the relevant time to be attributed to it. The risk of an incorrect assessment of the political consequences of the decision taken by the claimant belongs to his own area of responsibility and risk, which he cannot transfer to the defendant as a contractual party through an obligation to provide information."

[8] Sec. Merkur.de, 08.08.2020; https://www.merkur.de/lokales/weilheim/weilheim-ort29677/5g-telekom-wehrt-sich-gegen-oedp-brief-90022476.html. (Published in German with the prior permission of attorney W. Krahn-Zembol)