



Court Decides Property Owners “who rent space” to Telecoms Can Be Held Liable for Health Impacts Cell Towers, Antennas (Germany)

Description

GERMANY: Decades of research has already proven that exposure to radiation from cell towers and antennae as well as other sources of wireless is biologically harmful. Some governments are more proactive about warning residents about exposure risks. Nevertheless, due to the “Race to 5G”, cell towers and antennae continue to be installed at a rapid pace near homes, schools, pretty much everywhere worldwide. Opposition to both 5G and 4G infrastructure continues to increase and has led to more citizens taking legal action to stop deployment especially near their homes.

From EMF Facts:

German court finds property owners can be liable for health impacts from base station antennas on their property

From the Swedish Radiation Protection Foundation

Google translation:

A German court has clarified in a lawsuit that property owners who rent space for base stations and mobile towers assume responsibility for health consequences of the activity. Although the radiation is lower than the relevant 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 rental agreement with a mobile phone operator regarding the location of base stations. The ruling, which rejected the municipality’s demand for termination of a lease for mobile base stations, clarifies that property owners who rent space for mobile masts or base stations are responsible together with the telecom operators for any damage that the business may

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

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

In addition, to date, 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. (Regulation 26 on electromagnetic fields / Germany). The telecom operators have therefore for years in their annual reports warned their shareholders of further government regulation in the area.

Should set aside funds for the liability risk

Lawyer Krah-Zembol continues:

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

The limit values do not protect against liability claims

Furthermore, the lawyer states that the mere fact that the limit values are complied with does not mean that the liability for damages is removed:

“Even if telecom operators repeatedly claim to comply with the limit values when operating their facilities, this does not in any way exclude liability on their part or on the part of the property owner. On the contrary, the Federal Court (in Germany) has repeatedly stated that producers or operators cannot liberate themselves by referring to the official limit values if they know or should have known of additional harmful effects, etc .. This is obvious even today, since even the majority of scientific studies show additional effects and harmful effects even though the radiation is lower than the limit values.

Since even the head of the Office of Technical 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 risk of liability. ”

In the present case, the court also clarified that the municipality is contractually liable for 30 years. Property owners must therefore also be responsible for all new dangers and risks, which can be further strengthened through 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 responsibility that arises for property owners who rent out space for mobile masts and mobile base stations. He has previously pursued several successful damages cases against environmentally damaging operators:

- It is the same principle that applies in Sweden. It is my opinion that in these cases, both the telecom operator and the property owner are jointly and severally liable for damages as a result of the business in accordance with applicable tort law in the Environmental Code. This also applies to damages for reduced property values when it can be demonstrated that nearby residents have been affected by reduced property values due to the business. The same principle also applies to, for example, wind turbines.

– The damages are strict, ie there is an obligation to pay compensation even if the applicable conditions, limit values, etc. are complied with. The current rules of tort law came about through our lawsuits in the 70s, 80s and 90s when some of our lawsuits went through the entire legal system and the rulings were codified by changing the then legislation.

Property owners are often unaware of the responsibility

According to the organization Diagnose-funk, property owners should be informed about the current responsibilities. The vast majority should be unaware of the liability they assume when they provide space for mobile base stations or mobile masts. Potential landlords of a plot / property should in each individual lease agree that the tenant (telecom operator) agrees to take responsibility for all claims for an unlimited amount, for example according to the wording below:

“The tenant shall indemnify the landlord [municipality, parish, housing company...] 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 Landster tribunal in Münster, AZ: 08 O 178/21, it is stated on page 11, second and third paragraphs: ‘ did not know that in the external relationship he himself was responsible as responsible for the condition, he can not succeed with this. As a company governed by public law, the plaintiff as a municipality must have been sufficiently aware of his own disturbance of the permit. This does not mean that the defendant would have a possible information obligation that it did not fulfill, which 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] STOA study from the European Parliament’s Research Service, July 2021 at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/690012/EPRS_STU\(2021\)690012_EN.pdf](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 associated with new results on

harmful health effects of the radiation from Ericsson's equipment:

“5.3 Any health risks associated with electromagnetic fields within the radio frequency band may give rise to different 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 generates electromagnetic fields within the radio frequency band can expose individuals to health risks.

[5] In the judgment delivered by the Münster Regional Court, it is stated on page 11, third paragraph: “To the extent that the plaintiff bases the unreasonable liability risk on him on a partial limitation of the defendant's liability, this does not lead to any other result.”

[6] BGHZ 81, 199, in detail also Krahn-Zembol, “Germany: Product Liability Risks in EMF Emitting Devices and Devices”, Produkthaftpflicht international 6/93, pp. 204-210.

[7] Particularly for municipalities intending to enter into an agreement with a system operator, it should be noted that the Regional Court of Münster in its judgment found that there is no reason for termination in the fact that the wider possible health risks below the limit values in 26: e BImSchV were not sufficiently obvious to the municipality when the agreement was entered into. Page 12, the last paragraph and page 13 above in the judgment thus read: “The appellant, as a company governed by public law, is not a private person who is in special need of protection. According to his own statement, the discussions about possible health risks from mobile radio installations have not only been public for many years, even though the limit values in the 26th BImSchV are followed, but “scientifically based doubts” were known even before the agreement was entered into. In this respect, the complaining 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 plaintiff belongs to his own area of responsibility and risk, which he cannot transfer to the defendant as a contracting party through the obligation to provide information. ”



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[8] Gem. 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 lawyer W. Krahn-Zembol)

<https://www.stralskyddsstiftelsen.se/2022/07/05/domstol-fastighetsagare-delansvariga-for-halsoskador-av-mobilbasstationer/>

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By B.N. Frank

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