

18 February 2021

Luther successfully advises Swiss Leibstadt nuclear power plant in proceedings before the Frankfurt a.M. Administrative Court

Dusseldorf/Frankfurt a.M. – By decision of 12 February 2021, the Administrative Court of Frankfurt a.M. granted the urgent application of a manufacturer and supplier of fuel elements (case no. 6 L 3232/20). The proceedings concerned the export of unirradiated fuel elements from the German state of Lower Saxony to Switzerland, against which objections had been filed by an environmental association and several private individuals. The Administrative Court ruled that the export licence is immediately enforceable, i.e. that there are no legal obstacles to the export. This means that the continued operation of the Swiss power plant, which was advised and represented in court by Luther Rechtsanwaltsgesellschaft, is guaranteed. Prof. Dr Tobias Leidinger, who is a Partner at Luther, was once again able to demonstrate his expertise in nuclear and environmental law with this mandate.

The German Federal Office for Economic Affairs and Export Control (BAFA) had granted the manufacturer of the fuel elements an export licence under nuclear law for the supply of the Leibstadt nuclear power plant in September 2020. Three private individuals and an environmental association had filed objections against this, arguing that the operation of the nuclear power plant threatened the safety of the entire region due to the age and alleged defects of the power plant. The objections raised against the export licence from the Federal Office for Economic Affairs and Export Control concerned fundamental issues under nuclear, foreign trade and European and German environmental law (including the European Dual Use Regulation, the interpretation of Sec. 3 of the German Atomic Energy Act (AtG), the Aarhus Convention and the German Environmental Remedies Act (UmwRG)).

The 6th Chamber of the Administrative Court, which is responsible for nuclear law, has now ruled that the export licence is immediately enforceable regardless of the objections for the following reasons:

1. The objections raised by the private persons, who were summoned as interested parties, are obviously inadmissible and, therefore, do not have suspensive effect. This is because the nuclear export rule set out in Sec. 3 of the German Atomic Energy Act does not protect the life and health of third parties. Instead, according to the factual requirements described therein, it only protects the German state and the public interest. In a parallel case, where Luther had also provided support, the Hessian Administrative Court had recently issued a similar ruling (decision of 8 December 2020 - 6 B 2637/20).

2. In the current proceedings, it was disputed whether these principles also apply in the event that an objection is filed by a recognised environmental association. The association invoked its right to bring an action as an association under the German Environmental Remedies Act, which it claimed had to be interpreted in a broader sense, taking into account the provisions of the Aarhus Convention. The competent Chamber of the Administrative Court did not adopt this reasoning, agreeing instead with the view of the law taken by the supplier and the power plant operator, according to which the environmental association has no right to file an objection because the German legal system does not provide for a right of action by associations in relation to nuclear export licences. Nothing to the contrary results from the Aarhus Convention or international environmental law.

On behalf of Kernkraftwerk Leibstadt AG:

Luther, Environmental and Planning Law: Prof. Dr Tobias Leidinger (Partner), Dr Juliane Hoss (Associate)

Brief Profile Luther Rechtsanwaltsgesellschaft mbH

Luther is a leading German commercial law firm that offers comprehensive legal and tax advice. The full-service law firm employs over 420 lawyers and tax advisors and is represented in ten German economic hubs as well as with ten of its own international offices in key investment locations and financial centres in Europe and Asia. Its clients include medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions. On the Continent, Luther is part of a group of independent leading law firms who have worked together for many years on joint cross-border projects.

Luther Rechtsanwaltsgesellschaft mbH is a law firm with a business approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. All of Luther's lawyers and tax advisers have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Luther was named "Law Firm of the Year 2019" by the German legal published JUVE. Further information is available at: www.luther-lawfirm.com

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